

Present: Chairperson Verdi-Hus; President Pro-Tem Kamp; Members: Fahlen, Freedman, Johnson, Oen, Pagnucco and Schafer

Absent: Needham

Also Present: Building Official, Byrwa
Council member, Schmitt

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 Schafer, seconded by Oen, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, May 13, 2002 be approved as submitted.

Motion passed unanimously.

REHEAR CASE NO. 1044

Petitioner and Property: Larry Svalya
16260 Birwood
Lot 81, Henry Winegar's Eco City
TH24-01-202-031

Petition: Petitioner requests the following deviations:
a. Retain finished side of fence on interior side of lot
b. Retain the 6' replacement fence
c. Retain solid wood replacement fence

The petitioner Larry Svalya is requesting a variance to retain an existing six foot privacy fence, which is the result of a repair/replacement of a year ago. He was cited with fence violations with respect to height and transparency. This appeal case was presented at the May 13, 2002 meeting. Prior to that meeting, Svalya was told that the orientation of the fence is also in violation of the ordinance. The finished side of the fence must face out. The petitioner asked that a vote on his appeal be postponed until the next Zoning Board or Appeals meeting.

Svalya stated that he will change the orientation of the existing fence. He noted, however, that the neighbors have no objection to the fence as erected. Svalya maintains that the height and transparency is a good solution for privacy on a narrow lot. He submitted a letter with his revised petition covering many of the points made at the May meeting.

Pagnucco related that the Village Planning Board spent over a year reviewing and revising the Fence Ordinance, which was adopted by Council. Maintaining open space in Beverly Hills was an important consideration. It is unfortunate that the fence is in violation of the ordinance.

In response to an inquiry, Svalya stated that his fence contractor was unaware of the Beverly Hills Fence Ordinance, and it was not his intent to violate the ordinance. Svalya reiterated that

the work began as an attempt to repair the original, dilapidated fence. The end result was a 98% new fence due to rotted material. Svalya thinks that the new fence is a good solution for providing privacy on his property. Modifying or removing the fence would cost a considerable amount of money.

Kamp agrees that this situation is unfortunate, and it is regrettable that the petitioner or his representative did not check the restrictions of the Zoning Ordinance. That is not something that the Board can consider in strong support of this case because it is incumbent on the property owner to check ordinance restrictions. Kamp stated that this is a Board of limited powers. Its members have to be convinced as to why the law should be changed in the petitioner's favor.

The Village Council has indicated that it is the public policy of the Village that the type of fence that is being requested is not permitted. Non-conforming uses will come to an end at some point in order to accomplish public policy. It is expected that the new fence would be erected in conformity with the ordinance.

Kamp suggested that this is not the forum to debate whether the proposed fence is a good solution for privacy. The Board will consider whether this is a special case and whether the law should be changed in the petitioner's favor. He does not see a justification for changing the ordinance.

Svalya commented that privacy screens are allowed but would not be an alternative on his narrow lot. He does not see another solution to affording privacy, particularly with a raised deck and a pool on the lot to the rear. Kamp suggested that a potential alternative would be to plant tall, dense shrubbery for privacy.

Schafer commented that the spirit of the fence ordinance is to maintain the open character of the Village. However, the houses in that neighborhood are close together. Anyone driving by would not observe a fence with the exception of the driveway gate. He asked if Svalya would be willing to remove the driveway gate as a compromise. Svalya agreed to this.

Nadia Purnell of 16320 Birwood commented on the small size of the lots on Birwood. She supports Svalya's request for a variance to retain his fence.

Fahlen commented that this is a unique piece of property that is 40' wide and 140' deep. The house was built in 1928, long before the Village Zoning Ordinance was adopted. He observed that a lot of people in that neighborhood are not aware of the ordinance that limits the fence height to four feet. If the petitioner is willing to remove the gate and turn the fence around so that the finished side faces out, Fahlen would vote in favor of the variance request.

Freedman commented that the Planning Board in its review of the Fence Ordinance considered whether to have different ordinances for the east and west parts of Beverly Hills. The amended Fence Ordinance adopted by Council does not provide for six foot fences in this area. Freedman is uncomfortable with allowing six feet high fences for that reason.

Kamp stated that it has been his experience that, in situations where people in certain neighborhoods have a strong collective interest and needs, they can approach the governing body with a request to seek remedies through changes in the law. He agrees with Freedman that the Planning Board and Council considered whether to have different requirements in different districts and decided against it.

Fahlen stated that he appreciates open space in the community. He maintains that the Village does not have the staff required to enforce its Fence Ordinance. Fahlen estimates that 50% of the lots in the area in question have six foot fences. This is a unique piece of property built in 1928, 30 years before the ordinance was passed.

Decision: MOTION by Fahlen, seconded by Schafer, to approve the request for variance with the condition that the petitioner remove the gate visible from the street and correct the orientation of the fence. The hardship is based on the size of the lot and the age of the house.

Svalya remarked that all of the adjoining property owners support the variance to retain the fence. He agrees to removing the gate and turning the fence around with the finished side facing the neighbors.

Roll Call Vote:

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

Motion fails (5 – 3).

MOTION by Kamp, seconded by Freedman, that the request for variance be denied due to the failure of the petitioner to show a peculiar or exception practical difficulty or undue hardship.

Roll Call Vote:

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

Motion passes (5 – 3).

CASE NO. 1046

This appeal was not heard due to the absence of the petitioner.

CASE NO. 1047

Petitioner & Property: Mark Mamassian
16224 Locherbie
Lots part 750, 751 of Beverly Hills #1
TH24-01-251-009

Petition: Petitioner requests side yard deviations from the required minimum 12.5' open space to 4 ³/₄' on the west side and from the required 17.6' open space to 16'-7 ¹/₄" on the east side to construct a 1 ¹/₂ story addition in order to continue with the existing line of the house.

The petitioner Mark Mamassian is requesting side yard variances in order to construct an addition that will continue with the existing line of the house. He explained that the same request was presented in 2000 and granted by the Zoning Board of Appeals but not constructed due to the uncertainty in the economy (Case No. 997 on July 10, 2000).

Mamassian stated that the house is a 1,200 square foot, 1¹/₂ story bungalow. He outlined the floor plan of the house to demonstrate that the addition will provide needed living space. Materials used will match the existing style of the home so it does not look like an addition. Mamassian addressed questions from Board members.

Decision: MOTION by Kamp, seconded by Pagnucco, that the variance be approved due to the peculiar or exceptional practical difficulty and the undue hardship in building the proposed addition considering the configuration of the lot. The variance does not increase the non-conformity of the building but follows the existing line of the house.

Roll Call Vote:
Motion passed unanimously.

CASE NO. 1048

Petitioner and Property: Hilliard Gray
16907 Kirkshire
Lots, Part 65-71 of Rex Humphrey's Eco City
TH24-01-129-009

Petition: Petitioner requests a side yard deviation from the required 15' side yard open space to 11.6' for a proposed two story rear addition in order to continue with the existing line of the house.

The petitioner Hilliard Gray stated that the variance is requested in order to build an addition that would continue the existing lines of the house. He distributed an architect's drawing of the proposed addition. Gray stated that a hardship exists in that the living quarters are very small.

It was noted that the proposed addition will infringe on the west side yard less than the existing sun room that will be removed.

Decision: MOTION by Kamp, seconded by Freedman, that the variance be approved due to the peculiar and exceptional practical difficulty and the undue hardship in adding the proposed addition considering the configuration of the lot. The variance does not increase the non-conformity of the building but follows the existing east and west lines of the house.

Roll Call Vote:
Motion passed unanimously.

CASE NO. 1049

Petitioner & Property: Kevin Darnall
19885 Sunnyslope
Lots 2875 and 1876 of Beverly Hills #10
TH24-01-101-001

Petition: Petitioner requests a deviation to construct an attached garage in the front yard that would be less than the average 51' front yard setback of the residences within 200' of his property.

Board member Oen recused himself due to a possible conflict of interest.

The petitioner Kevin Darnall is requesting a 21' variance to build a side entry garage that will allow him to use the existing garage to expand the living space of the house. The hardship in this case is that the lot is pie-shaped with the house wedged into the rear of the lot. There is no other place to build a garage. Expanding the living space of the house requires him to build forward and deviate from the average 51' front yard line.

Questions from Board members were addressed by the petitioner. Darnall commented on the peculiar nature of the dead-end, winding street. There are only six houses at the end of the dead-end street in addition to the petitioner's home. Darnall stated that he has spoken to his neighbors, who support his plans for a garage addition. The proposed three-car garage will be 34' x 26'.

Verdi-Hus read a letter dated June 10, 2002 from Bob Stansberry of 19960 Sunnyslope stating that he has no objection to the request for variance to build a garage as long as it is one story high.

The petitioner stated that the design is for a one and one-half story garage, but the rooflines are the same as the house. There is no difference from a physical viewpoint between the one and one and one-half story structure.

Sharon Tischler of 21415 Virmar Court questioned the size of the house and was informed it was 2,200 square feet.

The petitioner distributed a drawing that shows what the addition would look like on the lot. Darnall commented on the unique nature of the neighborhood. There is one house with a swimming pool in the front yard. There are several houses that have paved driveways right next to the road, and cars park in that area.

Darnall stated that his house is a very narrow, long ranch with three bedrooms. The existing garage will be converted into a family room. It is his view that his proposal will increase the value of the property.

Decision: MOTION by Fahlen, seconded by Pagnucco, to approve the variance requested based on a hardship due to the configuration of the lot and location of the house on the lot. The house was built in 1948.

Roll Call Vote:

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

Motion passed (6 yes – 1 no – 1 abstention).

CASE NO. 1050

Petitioner & Property: Kevin Dimitry
30255 Woodhaven
Lot 85 of Berkshire Valley #3
TH24-10-179-015

Petition: Petitioner requests a deviation to construct an attached garage in the front yard that would be less than the average 113.67' front yard setback of the residences within 200' of the petitioner's property.

The petitioner Kevin Dimitry proposes to expand his current two-car garage by bringing it out another 16 feet. The hardship is that he has a third car, a classic car that he would like to store in

the garage. The proposed garage addition will be brick and will blend in with the rest of the house.

Dimitry was asked if he considered placing the garage anywhere else on his large back yard. He responded that the rear of his lot is mainly woods with no way to get a car back there. There is already a shed existing in the rear yard.

Kamp stated that this is a Board of limited power. Its members have to be convinced why the law should be changed in the petitioner's favor. Dimitry has asked that the variance be granted on the grounds of a peculiar or exceptional practical difficulty. This Board has had a number of cases in the past involving variances requested for additional storage space. Kamp maintains that there might be alternatives for storage of the petitioner's collectible car.

Dimitry submitted a letter signed by the following three neighbors who indicate that they have no issues with the garage addition: Rose Ellen Smith of 30205 Woodhaven, Freeman M. Moore of 30200 Woodhaven, and Damon D. Hawkins of 30250 Woodhaven.

Dimitry related the front yard open space dimensions of houses within 200 feet of his lot, noting that the house two lots south of his residence is located far from the street, which distorts the average setback figure.

Sharon Tischler of 21415 Virmar Court commented that she has talked to a couple of neighbors, and there are varying opinions on this variance request. Her questions were addressed. The circle drive will stay in place and the garage door will face the front.

Decision: MOTION by Johnson, seconded by Pagnucco, that the request for variance be granted based on the practical difficulty due to the small size of the existing garage.

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

Motion fails (5 – 3).

MOTION by Freedman, seconded by Schafer, to deny the petition as submitted for failure to demonstrate a peculiar or exceptional practical difficulty in terms of needing additional storage.

Roll Call Vote:

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

Motion passes (5 – 3).

ZONING BOARD COMMENTS

In answer to an inquiry, Byrwa stated that he had no information regarding the absence of the petitioner for Case No. 1046. The petitioner was mailed notification of the hearing and a copy of the agenda.

Johnson questioned whether the Zoning Board can make a recommendation to Council that there be an inspection program to spot illegal fences being erected. Verdi-Hus responded that it is not within the authority of the Board, but Johnson can approach Council as a resident.

A question from Sharon Tischler of 21415 Virmar Court on the fence appeals was addressed by the Board.

MOTION by Schafer, seconded by Freedman, to adjourn the meeting at 8:30 p.m.
Motion passed unanimously.

MaryAnn Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary