

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

Absent: Freedman, Johnson and Pagnucco

Also Present: Building Official, Byrwa

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 Fahlen, seconded by Kamp, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, June 10, 2002 be approved as submitted.

Motion passed unanimously.

CASE NO. 1053

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

Petition: Petitioners request deviations to obtain a variance from Section 22.09.170 and 22.30.20 to build a single family home on Parcel H of their lot.

Attorney Rick Rassel, representing Jennifer and Anthony Roma, reviewed that the Romas came before the Zoning Board of Appeals in February with a related variance request, which was conditioned upon a lot split being sought through the Village ordinance procedures. For this reason, the Board is familiar with the Roma's vision for their property on Beverly Road.

The applicants' property, commonly known as 19745 Beverly Road, consists of two separate parcels within Supervisor's Plat No. 13, Parcels A and H of Lot 20. The property consists of approximately 2.264 acres and is zoned R-1 Single Family Residential.

The Romas are asking for a variance from two sections of the Beverly Hills Zoning Ordinance, Section 22.08.170 Public or Private Road Frontage for Residential Property and Section 22.30.020 Nonconforming Lots. Rassel maintains that these ordinance sections would restrict the Romas' ability to build a single family residence on Parcel H of their property. The Romas currently reside in a home on Parcel A.

Rassel related that the problem is that Section 22.08.170 of the ordinance would restrict the Romas' ability to build a single family residence on Parcel H of the property for the reason that the ordinance requires 25 feet of road frontage. He stated that this requirement did not exist when Parcel H was created in 1949. The Romas propose to create an access easement running along Parcel A to provide the necessary access to the landlocked Parcel H.

Rassel stated that it is important to understand that the all setback and other requirements can be met on this 2.26 acre site for placement of a home on Parcel H. Creation of an access easement will not create setback problems for Parcel A.

Rassel stated that Ordinance Section 22.30.020 can be referred to as a “merger ordinance”. It says that, if there is a parcel or a lot that is non-conforming in some sense, it becomes merged with conforming lots under the same ownership. Because Parcel H does not have the required 25 feet on a public or private road, it becomes merged by common ownership into parcel A. That is a merger for purposes of the Beverly Hills Ordinance.

Rassel contends that it is clear under State Law that Parcels A and H are separate and must be looked at separately for purposes of whether or not a permitted use is allowed in that area. Because of the ordinance requirement that there be 25 feet of road frontage, parcel H has been regulated to the point where it cannot be used for permitted purposes, which is a single family residence. That creates a hardship for the Romas whose intent for their property is to build a home in which to live on that parcel.

The petitioner is asking for relief from the requirement for 25 feet on a private or public road, which would obviate the need for a second variance because Parcel H would then become conforming to the ordinance in all other respects.

Rassel maintains that this situation is unique. These parcels were created in the late 1940’s at which time the requirement for 25 feet of road frontage did not exist. That ordinance amendment was adopted in 1992. He believes that the purpose of the Ordinance amendment was to prevent the creation of new parcels on lots that do not front on an access road and was not to regulate parcels that were created under the old Plat Act. The applicants’ position is that to enforce this ordinance strictly would prevent them from using Parcel H for its permitted purpose.

Rassel stated that it is not a self-created hardship in the sense that Parcels A and H were created not by the Romas but by a lawful land division process that took place in the late 1940’s. The Romas have spent a significant amount of time speaking to neighbors and have the support of many of them for this proposal. Letters have been submitted from residents who view this proposal as a potential benefit to the neighborhood and who think of the Romas as good neighbors.

Verdi-Hus asked Rassel to explain the difference between his presentation tonight and the request made several months ago for this site.

Rassel responded that the overall concept is no different. The Romas would like to build a home on Parcel H. What is different is that this variance request is not being made in connection with a lot split process. When the Romas came before the Village previously there was some question with regard to whether or not they needed to split Parcel A and H under the Village ordinance to create two parcels. Since then, it has been determined that Parcels A and H were never combined under State Law. Therefore, the Romas did not need to pursue the lot split process. There is an existing situation. The Romas purchased the lot that way and intended to

use it in this manner. The variance is different now because the Romas need relief from the 25 foot road frontage requirement that was enacted in 1992, which the applicant believes was intended to prevent the creation of new situations like this and not pre-existing conditions.

Verdi-Hus asked Byrwa what setbacks would be required if the variances were granted and a home was built on the lot. Byrwa answered that the setbacks are controlled by R-1 zoning. There would have to be a minimum 40' setback from Parcel A. Typically, the front setback is also determined by an average setback established by houses on properties 200 feet in each direction. This landlocked property is unique, and the building would have to conform to the minimum 40 foot setback.

Rassel stated that this is such a large piece of property that he is sure that the Romas would be amenable to adding a condition to the approval that they would meet the average front setback in the neighborhood. They have enough room to establish significant front, side, and rear setbacks. The home will be consistent with the character of the neighborhood.

Kamp asked how the parcel is treated currently for tax purposes. Rassel responded that there is one Sidwell number on this property and one deed that contains a description of both Parcel A and Parcel H with separate legal descriptions. Because Parcel H does not meet the front footage requirement, the parcels become merged under the Beverly Hills' ordinance. The State land division law does not combine these parcels.

Kamp asked how this situation is legally distinct from any other situation in the Village where there is a single household with a single Sidwell number transacted with a single deed combining multiple lots. He questioned how many other parcels in the Village are comprised of legally distinct lots created before 1992 that are combined in a single Sidwell number with a single household.

Rassel stated that these parcels were created in 1948 and 1949 under the old Plat Act. There was a lawful division of a larger piece of property that created a number of different parcels within the surrounding area. Therefore it is legal and unique from others that may not predate the 1968 land division law. The division that took place in the 1940's would not have been lawful under the current state land division act.

Kamp asked how the petitioners deal with the fact that any hardship is self created because the owners came to the hardship by buying the property with full knowledge of the limitations that exist.

Rassel stated that the hardship was created by the ordinance that combines the two parcels. It is clear under Michigan law that challenging an ordinance in terms of taking the position that it unreasonably restricts the use of a property cannot be cut off at the date of title transfer. The Romas have a right to ask for relief from an ordinance that in their unique situation has created a hardship.

Kamp asked if the applicants are saying that the enforcement of what they contend is an unlawful ordinance applied to a situation which may be similar to many throughout the Village creates the hardship.

Rassel responded that it is the applicants' contention that the ordinance is unreasonable to the extent that it amounts to a hardship to the Romas. It restricts the use of an otherwise lawfully created parcel for its permitted purpose and essentially regulates it out of use.

Kamp stated that the Zoning Board of Appeals is a body of limited powers; it has to be convinced that the law should be changed in the petitioners' favor. Part of Rassel's presentation goes to the nature of the Zoning Ordinance itself. He is making a legal argument that the Village Council did not have the power to pass an ordinance that merged two legally distinct lots before a certain date into one parcel for zoning purposes.

Rassel clarified that he is not saying that the ordinance should not have been passed, but that each ordinance must be looked at in terms of each particular piece of property. He is advocating unreasonable consequences with respect to the Roma property. The ordinance may have positive health, safety and welfare benefits for much of the Village.

Kamp understands that the petitioners contend that any single household parcel with a single Sidwell number or transacted under a single deed should be treated as distinct parcels for zoning purposes if that property was comprised of legally distinct parcels prior to 1992.

Rassel commented that the Romas would not be here today if the Council had seen fit in 1992 to include an exception in the ordinance that made this type of situation exempt from coverage from that requirement. He reiterated that he is taking the position that this particular property falls out of the intended consequences of an otherwise valid ordinance.

Kamp remarked that the Village is replete with situations where legally distinct parcels were assembled and homes were constructed on them. They have been treated as single homesteads for a long period of time. It is difficult for him as a Zoning Board member to accept a hardship based on a legal argument that the Village should not be entitled to treat separately distinct parcels as one homestead for zoning purposes.

Anthony Roma, owner of the property in question, commented that the discussion has been focused on the "merger ordinance". He suggests that if the Board grants a variance from the requirement for 25 feet of road frontage, these properties would not be merged under Ordinance Section 22.30.020. Section 22.08.170 says that residential buildings may be permitted on a lot abutting a permanent access easement to a public road if four conditions are met. The condition that is not met is that the permanent unobstructed access easement must be recorded prior to March 25, 1992. If this access easement had predated March 25, 1992, we would have met that exception to the 25 foot requirement.

Roma remarked that it is not unusual to have a situation where more than one legally separate piece of property is identified by one Sidwell number. Rassel added that State Law allows municipalities as taxing authorities to provide otherwise legally separate parcels with one

Sidwell number for the administrative ease of being able to tax someone under one number. This does not affect the separated nature of lots under State Law.

Rassel does not dispute that there may be other properties in the Village that may have identical issues, but he is asking that the Board consider the Romas request on its own individual merits and determine whether or not a hardship has been met. The Romas are asking the Zoning Board of Appeals for the relief that is provided in the ordinance for situations where an ordinance section has an unintended consequence. Rassel thinks the ordinance was intended to stop lot divisions for landlocked properties that otherwise were not created under State Law pre-existing the ordinance.

Kamp commented that the standard is whether there is an exceptional or undue hardship or a peculiar or exceptional practical difficulty. That requires the Board to assess what the petitioners are asking for against what else exists in the community.

Fahlen asked Byrwa if administration and Council are convinced that these are two lots, Parcel A and H. He indicated that the Southfield Township Assessor has been assessing the property for one lot and is not aware that there are two lots at 19745 Beverly Road.

Byrwa responded that he discussed this issue with Village Attorney Tom Ryan. Ryan agreed that, based on the evidence produced by the petitioner, the lot was split in the late 1940's. However, it is now a non-conforming land locked piece of property, which renders it unbuildable.

Byrwa commented that an ordinance amendment was passed in 1992 because the Village wanted to prevent development of flag lots, which is a land-locked piece of property behind another lot. He noted that, in this situation, the petitioner's lot is about five times the size of average lots in the neighborhood. Byrwa also mentioned that the lot in question could be combined with the lot to the east and developed as a cluster development with 6-8 homes.

Tony Roma related that Lots E and F were combined in the late 1960's to be part of the subdivision that backs up to his property. The property owners to the east of the Romas own Lots B and G.

Rassel stated that he drafted an opinion letter, which outlined the position he took under State Law as to why there are two separate lots on this property. He attached Attorney General opinions. Rassel's understanding is that the Village Attorney concurs with the State Law perspective. The Romas are here dealing with the 25 front footage restriction and combination of the property under Village of Beverly Hills ordinances.

Verdi Hus asked Byrwa to explain how a condominium development could occur on this parcel if it is combined with the adjacent parcel to the east.

Byrwa related that the property owner to the east attended a Village meeting last February and explained that he was unsuccessful in gaining approval for a lot split on his property about 10 years ago. This individual contacted the Romas requesting their participation in a land

consolidation of their property with his to construct a cluster development that would result in about 8 units.

Verdi-hus asked if it would be understood by the Romas that the property could only be utilized for a single family dwelling if the variances were granted. Byrwa responded that this would be understood.

Needham questioned when the process of assigning Sidwell numbers began. Byrwa recalled that the Village was in the process of consolidating Sidwell numbers in 1993.

Rassel noted that State Law requires the consent of the property owner to change two sidwell numbers to one sidwell number.

Verdi-Hus asked for comments from the audience.

Lyle Russell of 32201 Rosevear expressed the view that ignoring the requirements of the Village would open a floodgate for anybody else who wants to do the same thing.

Linda Lochen of 32076 Rosevear concurs that granting this variance would set an unfavorable precedent. She does not want to live in a place where there is a house behind a house. Lochen stated that there is no Parcel H according to the plat maps of the Village of Beverly Hills, Township of Southfield, or Oakland County records. The legal description indicates one Sidwell number and one lot.

Vic Marshall of 19905 Beverly Road questioned the assumption that the Roma's lot is five times the size of the average lots in the area. Marshall's lot is 1.33 acres. He also questioned whether there is a hardship when a property owner requests to subdivide a single-family lot to build another home and sell the primary residence.

Gerry Bright of 19646 Wilshire questioned the size of Parcel H according to the scale on the plan distributed with the notice of hearing. Jennifer Roma indicated that the scale of that map is not correct.

Doug Mancini of 19768 Beverly stated that the Romas are looking to maximize property that they own by building a beautiful home on the site. They have improved the home that they live in currently. Mancini stated that there would be no issue tonight if this would have occurred prior to 1992. He does not see a problem with granting a variance.

Cindy Harris of 19850 Chelsea commented that she has an extra lot on her property. She stated that the Romas have done a great deal to upgrade their home. Harris stated that there are homes in the subdivision that are much closer to each other than the proposed house on the rear portion of the Romas' large lot will be to their current home. She feels that they should be able to build a home on their property.

Maureen Marshall of 19905 Beverly Road thinks that it is a hardship for many of the neighbors to attend these meetings for a variance request from these people who knowingly bought a lot of a given size that was unbuildable at the time.

Mike Deronne of 31696 Mayfair does not feel that the proposed house would be a degradation to the neighborhood. The new house would be set far back and would not be noticeable.

Josh Ramsay of 20306 Ronsdale stated that he lives around the corner and rides his bike past the Roma lot almost every day. He does not see a problem with traffic or a dangerous situation. There are already two driveways on the property. Ramsay thinks that the Romas should be able to build a house on their property.

Mark Williams of 19845 Beverly is opposed to the proposal. The petitioners have not demonstrated an exceptional hardship. There is a reason why the Village has an ordinance against flag lots, which is to prevent this situation.

Ann Badynee of 31737 Waltham Court understands that the Romas are planning to build a tasteful house on that lot. She questions what will prevent others from building a big foot house on flag lots.

Kathleen Williams of 18930 Beverly Road stated that the Romas could combine their lot with the adjacent property, which would result in many more homes. These are good people who want to build one single-family home. She thinks it would be an improvement to the area.

Howard Blitstein of 19790 Wilshire reiterated the point that granting this variance would be a precedent setting event.

Aliceanne Inskeep of 19912 Wilshire stated that she and her husband Gerry Hoffman are opposed to granting a variance and concerned about the density issues. They have a large lot behind them that could be subject to the same situation.

Board member Schafer stated that he is unclear as to the legal status of these parcels. If they were deeded as separate parcels long ago, then they may be two separate lots under State Law. He is also unclear as to the impact of the 1997 Land Division Act and how it might interplay with the Village's 1992 ordinance. Schafer thinks that any motion made in favor of the variances should be conditioned upon an opinion from Village Attorney Ryan or some other evidence that these are two lots under State Law.

Rassel stated that these conditions would be acceptable to the Romas.

Kamp agrees with Schafer's comments about the lack of certain information. He would like more information regarding the exceptional or peculiar nature of this situation in comparison to other similar lots and the prevalence of similar situations throughout the Village. He views this case, in part, as a request for the Zoning Board of Appeals to interpret what a single lot of record is for purposes of our ordinance. Kamp would like the benefit of Ryan's input on some of the legalities. He questioned whether the Village has the authority to pass and enforce an

ordinance treating two platted parcels as a single lot of record for purposes of zoning ordinances.

Kamp stated that the petitioner should be aware that this Board consists of nine members, and approval of a variance requires a majority of the Board. Five of the six members present today would have to approve the variance. The petitioner has the option of tabling their request to another meeting.

Rassel stated that the decision for the petitioners to table their case is clear if the Zoning Board members feel they need more information to make an informed decision tonight.

Motion by Needham, seconded by Fahlen, to table Case No. 1053 to the next regular Zoning Board of Appeals meeting for further information.

Roll Call Vote:

Schafer - yes
Verdi-Hus - no
Fahlen - yes
Kamp - yes
Needham - yes
Oen - no

There was a question as to whether a motion to table requires five votes to pass.

Motion fails (4- 2).

On behalf of the petitioners, Rassel requested that Case No. 1053 be tabled to the next Zoning Board of Appeals meeting to allow the Board to gather additional information.

Byrwa informed those residents present that this case will be reheard at the regularly scheduled Zoning Board meeting of Monday, August 12. Notices of the re-hearing will not be mailed to area residents.

CASE NO. 1051

Petitioner and Property: Thomas and Barbara Nagarah
31209 W. Chelton
Lot 121 of Beverly Hills Estates #3 Subdivision
TH24-02-376-006

Petition: Petitioners request a rear yard deviation from the required 40' rear yard open space to 30' for a proposed one-story rear addition.

The petitioner Thomas Nagarah requested a variance to build an addition at the rear of the home. The proposed 16' x 12' addition will provide more living space in the kitchen area. It is not practical to locate the addition behind the garage due to the layout of the house. Nagarah

noted that there is a Church and wooded lot directly behind their property, so neighbors will not be affected by the addition.

Kamp questioned how the petitioner's situation is different from anybody else's with a similar house size and similarly situated lot. This variance is requested on the basis of a peculiar or exceptional practical difficulty, which requires some demonstration that the petitioner's situation is unique as opposed to anyone else in the Village who might wish the law changed in their favor. Kamp cannot find any justification for a hardship based on the placement of the house on the lot.

Barbara Nagarah commented that there are many small additions to homes in their subdivision.

Decision: Motion by Fahlen, seconded by Needham, that the petition be granted on the basis that there is no other location for the addition to the kitchen, which will provide more living space.

Roll Call Vote:

Schafer - no
Verdi-Hus - yes
Fahlen - yes
Kamp - no
Needham - yes
Oen - yes

Motion fails (4 – 2).

CASE NO. 1052

Petitioner and Property: Carole A. Vale
18565 Chelton Drive
Lot 81 of Beverly Hills Estates #2, TH24-02-455-012

Petition: Petitioner requests a rear yard deviation from the minimum 40' open space to 28-6' to change the use of an existing porch to a permanent room.

The petitioner Carole Vale explained that the proposal is to remove an existing enclosed porch and construct a permanent addition to the house in the same location. The addition will extend 3 feet further south than the existing porch. The existing rear yard setback non-conformity of the enclosed porch will not be increased. The purpose of the addition is to increase the size of the small kitchen.

Decision: Motion by Fahlen, seconded by Needham, that the petition be granted for the reason that there is no other place to locate the addition. The addition will continue the existing line of the non-conformity.

Roll Call Vote:
Motion passed unanimously.

CASE NO. 1054

Petitioner and Property: Dominic Giancarlo
32276 Arlington
Lots 503 & 504 of Beverly Hills #1
TH24-01-281-001

Petition: Petitioner requests a rear yard deviation from the required 40' rear yard open space to 22.3' for an attached garage.

The petitioner Dominic Giancarlo is requesting a variance to the rear setback in order to build an attached garage. He proposes to remove the existing attached garage, which has a failing foundation, and construct an addition to his home in that location. A new two-car attached garage will be constructed on the lot.

Giancarlo understands that the purpose of the ordinance is to provide for open space in the neighborhood. The proposed garage will not detract from the open space to the extent that it would if he were to build a detached garage of the same size elsewhere on the property. The design proposed in terms of replacing the existing garage is consistent with the character of the homes in the neighborhood.

Giancarlo stated that another reason for the garage intruding upon the setback is due to the location of the guide wire of the power pole. The proposed garage will provide for more parking space in the driveway. The placement of the house on the property in the early 1950's is such that there is not sufficient parking space in the driveway without encroaching on the public walkway. Giancarlo answered questions from Board members.

Byrwa mentioned that the closest structure to the petitioner's rear yard is the abutting neighbor's detached garage.

Verdi-Hus read a letter from Frank and Jane Schmid of 32304 Arlington Drive stating that they have no objections to the proposed request for variance. They state that the addition will enhance the appearance of the property and increase the value of the petitioner's home.

Giancarlo stated that he has also spoken to the neighbors who live behind them and on the other side of his property, and they are both comfortable with the proposed plans.

Decision: Motion by Kamp, seconded by Oen, that the variance be granted due to the exceptional and undue hardship created by the placement of the house on the parcel as well as the relationship of the existing power lines.

Roll Call Vote:
Motion passed unanimously.

ELECTION OF CHAIRPERSON AND VICE-CHAIR

Motion by Fahlen, seconded by Oen, to table the election of officers until next month when there are more members present.

Motion passed unanimously.

ZONING BOARD COMMENTS

Board members reviewed with Byrwa what information he will be requesting of Village Attorney Ryan with respect to Case No. 1053.

Motion by Schafer, seconded by Needham, to adjourn the meeting at 9:17 p.m.

Motion passed unanimously.

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

**Ellen E. Marshall
Village Clerk**

**Susan Bernard
Recording Secretary**