

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

Absent: Johnson and Needham

Also Present: Building Official, Byrwa
Council Liaison, McCleary
Council members, Schmitt and Mooney

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 Oen, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, May 12, 2003 be approved as submitted.

Motion passed unanimously.

CASE NO. 1075

Property & Petitioner: Craig Allen Koza
18865 Hillcrest
Lots 2428 and 2429 of Beverly Hills #6
TH24-02-204-005

Petition: Petitioner requests a rear yard deviation from the required 40' minimum open space to 35' to construct a one-story addition.

The petitioner Craig Koza was present requesting a variance from the 40' minimum rear yard setback to 35' in order to construct a one-story addition to the home, which was built in 1953. The homeowner proposes to remove an existing vinyl-sided Florida room built on a slab and replace it with a brick family room addition that will extend the living area by six feet and provide space that can be used by his growing family all year. Koza stated that the Florida room was included in the total square footage of the house when it was purchased last year. Because it is built on a slab and has baseboard heating, this room is not feasible as a living area in the winter months.

The location of the addition at the rear of the house will allow the windows to face the back yard. Koza displayed plans for the addition. He described the layout of the house to demonstrate how the rear yard location of the proposed addition is the only placement that will not disrupt the current layout. Koza stated that he showed his plans to abutting neighbors and received no objections.

Kamp stated that this is a Board of limited powers in the sense that the Village Council has set laws that determine certain characteristics for property in the Village. The Board's task is to consider exceptions to the law and decide whether the law should be changed in a petitioner's favor. The Board considers how the case presented is distinct from any other situation with

similar circumstances. A case is measured in terms of whether the enforcement of the ordinance creates a peculiar and exceptional practical difficulty or an undue hardship.

On a procedural matter, Kamp related that it takes a majority of the entire Board to grant a variance. It will require five positive votes to grant a variance. Petitioners have an option to table their case if they wish to be heard by a full Board of nine members.

In answer to an inquiry, the petitioner indicated that the distance from the east corner of the proposed addition to the rear lot line is estimated to be 37 ft.

Fahlen commented on the placement of the house on the lot and the fact that it is a unique shaped lot on a curved street. He does not think that the deviation requested is greater than what has been allowed for construction of additions on other lots in the area.

Decision: Motion by Fahlen, seconded by Pagnucco, to grant the variance requested due to a hardship on the basis of the location of the house on the lot and the configuration of the lot.

Roll Call Vote:
Motion passed (7 – 0).

CASE NO. 1076

This case was withdrawn by the petitioner.

CASE NO. 1077

Petitioner & Property: Brian Gijsbers
32055 Bellvine Trail
Part of Lot 114 of Cranbrook Woods #1
TH24- 03-176-004

Petition: Petitioner requests a deviation in the maximum 48” fence height requirement to 10’ to replace the tennis court fence.

Petitioner Brian Gijsbers stated that he has a tennis court in his back yard with a fence on each end that acts as a backstop. The fence has been in existence for over 30 years and is in a state of disrepair. He proposes to replace it with a black, vinyl-coated fence of the same dimension.

Byrwa observed that the few houses in the Village with tennis courts have standard 10’ back stops fences. The petitioner is requesting to replace an existing dilapidated fence. However, a structure that is not in compliance with the maximum fence height or that has received a previous variance is not automatically approved upon replacement.

It was suggested that the petitioner consider using a mesh-type of fencing attached to a lower 4’ fence. Gijsbers questioned the durability of a mesh fence considering that he has five children. He mentioned that his tennis court is not visible from the street.

Schafer commented that he considers this a minimal variance and would support the request for a variance. He does not think that it is the intent of the Fence Ordinance to prohibit standard back stop fences for tennis courts.

Decision: Motion by Schafer, seconded by Kamp, to grant the variance as requested on the basis that enforcement of the ordinance would create peculiar or exceptional practical difficulties for the petitioner.

Roll Call Vote:
Motion passed (7 – 0).

CASE NO. 1078

Petitioner & Property: Ann Lambrecht
32291 Verona Circle
Lots 429 and 429 of Beverly Hills #1
TH24-01-279-017

Petition: Petitioner requests a side yard deviation from the required 20' minimum open space to 9.6' open space for a detached garage.

The petitioner Ann Lambrecht is requesting a variance from the ordinance in order to build a detached garage in the only location available on the lot. The current one and one-half car garage will be turned into a family room. Lambrecht stated that four mature pine trees would have to be removed in order to comply with the ordinance. She submitted photographs that depict the situation.

Kamp stated that the petitioner purchased the property three weeks ago knowing its characteristics and whether it will fit their needs. He questioned the hardship involved with this case.

Lambrecht stated that there are many houses in the neighborhood with garages that are not within the side setback.

Fahlen stated that the petitioner submitted a copy of a mortgage survey onto which the dimensions of the proposed garage and resulting side yard were added. Fahlen questioned the scale of the drawing and the accuracy of the 8.6' side setback figure considering the dimensions indicated on the front of the lot. It was suggested that the case be tabled until a more accurate drawing is submitted for the Board's consideration.

Ann Lambrecht withdrew her case and asked to reschedule the hearing in order to provide more accurate information to the Board.

CASE NO. 1079

Property & Petitioner: Charles Cairns
16207 Wetherby
Part of Lot 1431, 1433 and all of Lot 1432
Beverly Hills #3, TH24-01-402-006

Petition: Petitioner requests a side yard deviation from the required 5' minimum open space to 3' open space for a detached garage.

The petitioner Charles Cairns proposes to replace an existing detached garage with a new 2 ½ car detached garage. The current garage extends 13" into a 6' utility easement and is located 2.9' from the west property line. The 22.4' deep by 22.3' wide garage is deteriorating and needs to be replaced.

The proposed 22' x 22' garage will be located out of the utility easement and 3' from the side yard. Cairns is asking for a variance to allow the west wall of the structure to be built 3' from the west property line. The practical difficulty is that the east bay of the garage would be unusable in terms of maneuvering the car into the garage if the structure was built 2' farther from the property line. In addition, if the garage were brought further into the yard, it would be located too close to the home, which would require another variance.

Decision: Motion by Kamp, seconded by Schafer, to approve the variance as requested due to the peculiar and exceptional practical difficulty of replacing the garage and noting that the new structure will decrease the existing non-conformity.

Roll Call Vote:
Motion passed (7 – 0).

CASE NO. 1080

Petitioner and Property: William Christie
32380 Mayfair
Part of Lots 2351, 2352
Beverly Hills #6, TH24-02-180-007

Petition: Petitioner requests a deviation from the required 100' minimum lot width to 79.5' in order to construct a new residence. *Also requested is a deviation to come ahead of the line of the adjacent existing houses whose average front setback is 43.84'. The proposed front setback is 40'.*

Bill and Lisa Christie were present requesting a variance on a lot they recently purchased on Mayfair. They are asking for a deviation from the 100' minimum lot width to 79.5' in order to construct a new residence. Christie pointed out that the front area variance noted in application is no longer being requested. The front setback of the proposed home will be moved back to 43.84' from the lot line, which is the average setback of the adjacent existing houses. Christie emphasized that the proposed home will conform to all ordinance requirements in terms of front, rear, and side setbacks.

Christie related that the existing home at 32380 Mayfair was built in 1941 and positioned on the property such that it is located on a 79.5' lot. The lot to the south on which the proposed home is to be built was recorded with the County Register of Deeds since the 1940s as a 79.5' lot.

Christie stated that the parcels he purchased have separate tax identification numbers. The property was conveyed to the Christies as Lots 2351 through 2353. Christie also owns Lot 2354, which is a 53' wide lot. He assured the Board that they do not plan to build on Lot 2354. He believes that a hardship exists in that the Village Ordinance adopted in 1959 requires a 100' minimum front lot width in this area. Christie interprets the ordinance as allowing a conforming home on a non-conforming lot.

Byrwa stated that this request for variance was reviewed by Village Attorney Tom Ryan, who recommended that the case come before the Zoning Board of Appeals for consideration of a variance from the required 100' lot width in this zoning district. The petitioner requests to build a conforming house on a 79.5' lot.

Christie stated that his family has lived in Beverly Hills on Fairfax for a number of years. They plan to live in the house purchased on Mayfair and are in the process of designing renovations to the home. It is proposed that Christie's father, a builder in the area, will supervise the construction of a home on the lot to the south. He assured the Board that the proposed structure will be in character with the other homes in the area.

Fahlen stated that he recalls hearing three similar cases since he has served on the Zoning Board of Appeals. A particular request for variance that was turned down by the Zoning Board went to Circuit Court where the parcel was determined to be a buildable lot.

The following residents expressed strong opposition to the variance requested on the basis that the proposed home would not be in character with their neighborhood of widely spaced homes. They urged the Zoning Board to uphold the ordinance requirement for 100' lot width. Residents thought that granting a variance would set an unfavorable precedent.

Mr. & Mrs. Rick Marsh	32344 Mayfair
Joan Mahoney	32431 Mayfair
Doug Michals	32415 Beaconsfield
Gary Valentine	32405 Mayfair
Mary Anne Gracely	32400 Sylvan Lane
Ralph Pearlman	19660 Warwick
Dave and Judy Fiscella	32371 Mayfair
Nancy Stevens	32385 Mayfair
Vince Borowski	31115 W. Chelton
Wally Gilbert	32343 Mayfair

Jim Plaskey of 31243 Cline stated that he knows the Christies and supports their proposal. He is confident that they will build a structure that will compliment the homes in the area.

Christie restated that the proposed house will maintain the minimum required setbacks in the front, rear and side yards and will not appear crowded on the lot. He has observed that other homes on Mayfair are built on lots that are less than 100 feet wide. To build another home on his property with a lot width of 100' would require removing the existing home built in 1941 and

building two new homes on the site. The Christies assured the neighbors that they want to positively impact the community.

Letters were received from the following individuals who expressed their opposition to the proposal in writing.

Leonard and Claire Jamiga	18910 Warwick
David T. Canham	32400 Mayfair
Leslie Carroll Michals	32415 Beaconsfield
Dave and Judy Fiscella	32371 Mayfair
Steven Horn & David VanHouten	19100 Warwick Dr.
Louis Chiesi	19091 Bedford
David Jensen	32415 Sylvan Lane
Ronald F. Williams	19041 Bedford

The Board discussed the property description on the deeds conveyed to the petitioner when they purchased the property.

Kamp proposed that there are two steps involved in a decision on this case. There is state law that governs and respects the configuration of lots as they are platted historically. The first step involves a provision in the Zoning Ordinance that addresses this.

Section 22.30.020 Non-conforming Lots states, “In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.”

Kamp believes that this section of the ordinance authorizes granting a variance if the petitioner can build a conforming house on a lot that does not meet the width requirement if the following conditions are met: 1) It has to be a single lot of record at the time the ordinance was adopted or amended, and 2) The proposed construction must conform in all other respects.

The ordinance defines a lot of record as follows: “A parcel of land delineated on a plat recorded with the Oakland County Register of Deeds, or a lot described by metes and bounds, and recorded with the Oakland County Register of Deeds”.

The question remains as to whether the lot on which the house is proposed is a single lot of record. The definition of lot of record as being a lot described by metes and bounds and recorded is not met by the documents submitted by the petitioner. However, the definition of lot of record also says that it could be a parcel of land delineated on a plat recorded with the Oakland County Register of Deeds at the effective date of the ordinance. Absent this proof, Kamp does not think

that the petitioner meets the conditions upon which to grant a variance. The next tier of analysis relates to whether the petitioner has demonstrated a hardship.

Kamp stated that the Christies need to provide the Board with a copy of a recorded plat from the Oakland County Register of Deeds showing that the lot in question is a single lot of record. The petitioners may be able to do this by continuing their research or having the title company look for this document.

Verdi-Hus stated that the Christies can withdraw their petition in order to provide the required information and request a rehearing next month. She noted that five positive votes of the seven members present are needed to approve a variance.

Schafer proposed that clarification be sought from Attorney Ryan as to whether a metes and bounds description is actually required or whether wording such as “the north half of lot...” is sufficient. Board members agreed that they do not have enough information to make a decision at this time considering the documentation provided by the petitioner and a question relative to the interpretation of the property description on the deeds.

Motion by Schafer, seconded by Kamp, to table Case No. 1080.

Roll Call Vote:
Motion passed (7 – 0).

The next ZBA meeting will be held on Monday, July 14 at 7:30 p.m. The Village will not notify area residents by mail of this rehearing.

CASE NO. 1081

Petitioner and Property: Tom Allen
5 Riverbank
Unit 11, Westwood Common
TH24-10-102-036

Petition: Petitioner requests a deviation to construct an accessory structure (deck) in the side yard.

The petitioner Tom Allen is requesting a variance that would allow him to build a deck on the side of his house. His property does not have a deck or patio area off the main floor. The house is built so that the entrance to the back and side yard is at the basement level.

An earlier plan to build a deck off the rear of the house was submitted to the architectural review committee of the Westwood Common Homeowner’s Association and was denied. The current plan for a deck in the side yard has been approved by the Association. The Village Ordinance states that no accessory buildings, structures, or uses shall be erected in the front or required side open space.

Questions from Board members were addressed by Allen. The petitioner maintains that it is a hardship to have to walk downstairs into the basement and out of the garage to use a grill on his driveway. He stated that a deck off the back of the house was not approved by the neighborhood association for architectural reasons. It also inhibited the view of a neighbor into the common area. Allen commented that there are decks in this area built on the side of homes.

Berndt understands that the deck would be at the grade level of the front of the house, which is a full story above ground in the back. Allen added that the deck would not be visible from the front of the house due to the grade.

Kamp commented that the configuration of homes on the lots in the Village Commons subdivision have required deviations from zoning laws. The layout does not easily accommodate decks and side yards. He suggests that this type of use and variance was part of the consideration when the subdivision was conceived and approved. Kamp questioned the hardship in the case considering that the petitioner purchased the home knowing the configuration of the homes in Village Commons.

Allen responded that he was under the assumption that a deck could be built when he purchased his home. A hardship exists in that the house does not have any other exit off the main level to the back yard other than the front door. A letter was written to the Board from the president of the association stating support for building this particular deck on the side of the house.

Allen stated that there appears to be a precedent in this unique neighborhood for this type of structure. Board members did not recall granting a variance for a deck in the side yard in this subdivision. Byrwa suggested that there are wooden, second floor stairs with landings that run down the side yard of some of the units because of the grade and slope of the lot.

Decision: Motion by Fahlen, seconded by Pagnucco, to approve the variance as requested on the basis that this is a unique lot in a unique subdivision, and a hardship exists in obtaining access to the lower level of the home.

Pagnucco	- yes
Schafer	- yes
Verdi-Hus	- no
Fahlen	- yes
Berndt	- yes
Kamp	- no
Oen	- no

Motion fails (4 – 3).

CASE NO. 1082

Petitioner: Michael N. Engle from Kasco, Inc.
26075 Woodward, Ste 300
Huntington Woods 48070

Property: 32350 Plumwood
Lot 71 of Cranbrook Woods #1
TH24-03-178-006

Petition: Petitioner requests a deviation to come ahead of the line of the adjacent existing houses whose average front setback is 86.10' for an addition to the existing attached garage. The proposed front setback is 77.2'.

The petitioner Michael Engle, representing property owner Robert Moglia, is present requesting a variance to exceed the average depths of the front open space of residences within 200 feet of the lot in question in order to construct an addition. The average front setback of the adjacent houses is 86.10'; the proposed front setback is 77.2'. Engle stated that the plans were redesigned since the ZBA hearing of May 12, 2003 to reduce the variance requested.

The petitioner has done research on similar deviations in the area. Moglia explained the hardship and practical reasons for granting this variance to build an addition on the front of the house. A hardship exists in that constructing an addition at the rear of the house would require renovation of a substantial amount of the interior of the home, relocation of utilities, removing a patio, and regrading the back yard to accommodate runoff. He noted that there is approximately \$30,000 invested in the patio, landscaping and driveway.

Moglia contends that the garage needs to extend out from the house in order to give the project the needed architectural integrity. The project involves changing the roofline, elevation, surface materials, landscaping, and windows in order to convey a more traditional style home. He has lived in the house for 22 years. Moglia asserted that the house renovation will conform to the character of the neighborhood and increase the property values of his home and the neighborhood.

Moglia displayed drawings of the project and described the proposed additions and renovations. He answered questions from Board members.

Stephen Kassab of 20600 Smallwood expressed the view that a hardship exists and the petition should be granted. Kassab is in the construction business and thinks that the house needs profile forward to create aesthetic value. A front setback of close to 80' will remain with the proposed variance.

Kassab commented that the neighborhood is old and will begin to change. He does not think that the ordinance restrictions make sense for this neighborhood. Kassab stated that he used a laser to measure the different setbacks from various houses in the neighborhood, which he related to the Board. He noted that there are curves in the road and cul-de-sacs in the area as well as different styles of homes. He referenced a similar case on Eastlady heard on July of 1998 and granted by the Zoning Board of Appeals.

Moglia stated that he showed the drawings to surrounding neighbors and received positive comments. He has submitted signatures of neighbors who support the proposal.

Bob Walsh of 20655 Smallwood Court stated that the only change in this petition from the case submitted and heard last month is that the garage is moved approximately one foot further away from the street. He asked that the Board uphold the ordinance requirements and deny the request for variance based on a lack of hardship.

Todd Lange of 32556 Westlady is a builder and a friend of Mr. Moglia. He has reviewed the plans and supports the petition. Lange thinks that the house when completed will be an attractive addition to the neighborhood. He remarked that the key aesthetic quality of Valley Woods is the variation in the style of homes. The proposed renovations will improve the value of the petitioner's house as well as enhance the neighborhood.

Stephen Zeiler of 32555 Eastlady commented that he received a variance in order to build a front yard addition in 1998. He supports homeowners who are trying to improve the neighborhood.

Decision: Motion by Schafer, seconded by Fahlen, to grant the petition due to the petitioner's claims that enforcement of the ordinance creates a peculiar or exceptional practical difficulties and exceptional or undue hardship.

Roll Call Vote:

Schafer	- no
Verdi-Hus	- yes
Fahlen	- no
Bearnt	- no
Kamp	- no
Oen	- no
Pagnucco	- yes

Motion fails (5 – 2).

CASE NO. 1083

Petitioner and Property: Ken Dowell
Beverly Hills United Methodist Church
20000 W. Thirteen Mile Road
Acreage, TH24-02-353-020

Petition: Petitioner requests a deviation to exceed the maximum 32 square foot for replacement of an existing ground sign to 38.7 sq. ft. and a deviation to allow two signs on the premises.

Kevin Dimitry, associate trustee, was present on behalf of Beverly Hills Methodist Church along with Harold Chapman from Chapman Sign Company. The church is requesting to replace an existing deteriorated ground sign that is 40 sq. ft. and 6' high with a new 38.7 sq. ft. sign at a

height of 4'10". It is proposed that an existing, low-profile sign on the corner of Thirteen Mile and Evergreen remain.

Byrwa commented that the Church is proposing to downsize its ground sign from the existing sign, but it is still in excess of the allowable 32 square feet. The sign will comply with height requirements. It will be erected in the same location as the existing sign. The changeable message sign will be illuminated and controlled by a timer. Byrwa recommends approval of the variances requested on the basis that the proposed sign represents less signage than the existing sign. The Church is located on a large site and has had the previous use of a small identification sign located at the corner of Thirteen Mile and Evergreen Roads.

A letter dated June 6, 2003 was received from Richard Perry, Deputy Superintendent for Business Services for Birmingham Public Schools. The School District does not object to this type of deviation and supports the Church's appeal.

Decision: Motion by Schafer, seconded by Oen, to grant the requested variance on the basis that enforcement of the ordinance would create exceptional undue hardship and considering the unique location and size of this parcel including its permitted exception for existence in a residential zoned district.

Roll Call Vote:
Motion passed (7 – 0).

BUILDING OFFICIAL COMMENTS

Byrwa commented on a case that will come before the Board next month involving a request to erect a tent in a front yard for a few days in connection with a house wedding in Beverly Hills.

ZONING BOARD COMMENTS

Board members further clarified what is required in terms of additional information with respect to Case No. 1080.

Kamp stated that it was mentioned to him that a large awning has existed for a length of time in the backyard of a home on 32411 Sheridan. Byrwa will look into this.

Motion by Schafer, seconded by Oen, to adjourn the meeting at 10:07 p.m.
Motion passed (7 – 0).

Maryann Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary