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

Absent: None

Also Present: Building Official, Byrwa
Council Liaison, McCleary
Council member, 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
The correction was made on page 3 to change "Case No. 1978" to read "1078".

Motion by Needham, seconded by Fahlen, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, June 9, 2003 be approved as amended.

Motion carried.

CASE NO. 1085

Petitioner & Property: Bonita Davis
20144 Wellesley Ct.
Lot 5 of Wellesley Subdivision
TH24-03-229-022

Petition: Petitioner requests a deviation to temporarily locate two tents on the lot for a wedding, one in the side yard and one in the front yard. Tents to be erected 7/31/03 and removed 8/2/03.

The petitioner Bonita Davis is requesting to have two party tents erected in the front and side yard for her daughter's wedding reception to be held at their home on Friday evening, August 1. It is proposed to set the tents up on Thursday, July 31 and take them down on Saturday, August 2. The tent to be set up in the side yard is 20' x 20'; the tent in the front yard will be 30' x 40'.

Davis explained that the irregular shaped lot is on a cul-de-sac without high visibility from the street. The configuration of the back yard and the landscaping will not accommodate even the 20' x 20' tent and necessary guy wires. Davis has talked to her neighbors, who have no objection to the tents. The petitioner has arranged to park the cars of the 120 guests in the driveways of neighbors who are out of town and on the street.

Decision: Motion by Fahlen, seconded by Oen, to approve the request for variance with the hardship being the irregular shape of the lot and the configuration of the back yard.

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

CASE NO. 1086

Petitioner & Property: Jeff Majchrzak, Captiva Building Co., Inc.
Property owner, Michelle Moody
18356 Bedford
Part of Lot 1878, 1880, all of Lot 1879
Beverly Hills #4, TH24-02-254-005

Petition: Petitioner requests a rear yard deviation from the required 40' minimum open space to 38' for a rear addition.

The petitioner Jeff Majchrzak from Captiva Building Co. was present representing property owner Michelle Moody. He is requesting a two foot variance from the rear yard setback in order to build an addition on the rear of the house for a master bath and closet. The proposed location will render the addition consistent with the roofline and layout of the house and provide the necessary square footage.

The petitioner and property owner addressed questions from the Board. Moody stated that the next door neighbor, who would be most directly affected by the addition, has no objections to the proposed addition.

Schafer commented that he does not find this lot to be unique, and noted that the house is centered on the lot.

Decision: Motion by Johnson, seconded by Pagnucco, that the petition be granted based on a practical difficulty considering the location of the house on the lot and the configuration of the lot.

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

Motion carried (8 – 1).

CASE NO. 1087

Petitioner & Property: Eric Costello
31175 Sheridan
Lots 402 & 403 of Beverly Manor #1
TH24-01-453-019

Petition: Petitioner requests a variance to retain the 6' high shadow box fence along the rear property line.

The petitioner Eric Costello presented his case for a variance to retain a 6' fence along his rear property line. Due to the angle of the lot, he has a view of three homes from the rear of his house. There is only 61'from his den to his next door neighbor's house. A 4' fence does not afford privacy. Costello stated that he was not aware of the ordinance at the time the fence was constructed six weeks ago.

It was explained that the Planning Board, Council and Zoning Board of Appeals spent a couple of years working on a new Fence Ordinance, which was adopted and published. Beverly Hills is a community that prefers open space to fences. It was suggested that the petitioner consider the use of landscaping for screening as an alternative. Costello responded that there is only 26' from his den to his rear lot line, leaving little room for landscaping considering the existing patio.

Michael Beyer of 16145 Elizabeth, next door neighbor, likes the fence and supports the applicant's request to retain it.

Kamp stated that the burden on an applicant is to prove why the law should be changed in their favor due to a unique or peculiar situation. He does not see how the petitioner's case is different than many other situations in the Village.

Chris Frisone of 16161 Elizabeth, who lives two houses from the petitioner, stated that the petitioner's lot is at a lower elevation than her back yard. She questioned how landscaping would accommodate that difference in elevation.

Ambrose Stewart of 16144 Madoline lives directly behind the house in question. He stated that part of the attraction of Beverly Hills is the open space and lack of fences. He does not see the necessity for a fence.

A individual from Dearborn asked a question about the Village's Fence Ordinance, which was addressed by a member of the Board.

Decision: Motion by Johnson, seconded by Pagnucco, that the variance be granted given the location of the house on the lot.

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

CASE NO. 1088

Petitioner & Property: Mark Everly
16141 Lauderdale
Lots 1480 and 1481
Beverly Hills #10, TH24-01-404-011

Petition: Petitioner requests a rear yard deviation from the required 40' minimum open space to 27' for a rear addition to the kitchen.

The petitioner Mark Everly is requesting a variance from the required 40' rear yard setback to 27' in order to build an addition on the back of the house that would update and enlarge the kitchen. There is currently 33' from the dining room area at the rear of the house to the back lot line.

Everly explained that the current kitchen is small, and more living area is needed to accommodate their family. The house was built in 1955. The addition will be constructed to blend in with the house. The proposed location is logical considering the existing layout of the house.

Everly stated that the distance from the addition to the lot line will be no less than the conditions existing on other properties in the neighborhood. He has talked to the four adjacent neighbors, who support his proposal.

Decision: Motion by Pagnucco, seconded by Fahlen, that the petition be approved due to the original setbacks of the house and the placement of the house on the lot, which was built prior to the adoption of the Village zoning ordinance.

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

CASE NO. 1089

Property & Petition: Jared Stein
16950 Elizabeth
Part of Lots 203, 205 and all 204
Beverly Manor, TH24-01-378-018

Petition: Petitioner requests a deviation to construct a detached garage 3' from the side yard lot line in order to be in alignment with the existing driveway.

The petitioner Jared Stein related that he recently moved into a house with an existing garage pad but no garage. He proposes to construct a garage in that location which is 3' from the lot line. If the garage was built at the required 5' from the property line, it would not line up with the existing driveway nor would it line up with a garage on the lot adjacent to his property to the rear. Stein is proposing to build a two-car garage. It would be difficult to back the second car out of the garage with the driveway positioned further from the lot line.

Building official Byrwa stated that many of the garages in this area are typically built 3' from the lot line. It is difficult to comply with the ordinance due to the shallow depth between the house and the garage almost rendering one bay inaccessible if they had to comply with the 5' setback.

Decision: Motion by Kamp, seconded by Pagnucco, that the request for variance be granted due to a peculiar and exceptional practical difficulty in building a conforming garage due to the configuration of the lot and the existing cement pad.

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

CASE NO. 1090

Petitioner & Property: Timothy J. Dwyer
16943 Georgina
Part of Lot 246, Lot 247
Beverly Manor, TH24-01-376-033

Petition: Petitioner requests a side yard deviation from the minimum 5' open space to 2.8' to remove old garage and construct a new one using the existing 42" footings.

The petitioner Timothy Dwyer proposes to replace an existing garage with a new garage using the existing 42" deep footings. The existing garage and driveway is 2.8' from the side lot line. The distance between the back porch and front of the garage is 22'. Dwyer stated that it is difficult to pull the second car into the east bay of the garage. If the garage were moved to comply with the 5' side yard requirement, it would make the east bay unusable.

Decision: Motion by Fahlen, seconded by Oen, that the request for variance be granted due to a peculiar and exceptional practical difficulty in building a conforming garage due to the configuration of the lot.

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

A member of the audience requested that the Board take a look at the ordinance requirement and allow garages in this neighborhood to be grandfathered in at 3 feet from the side lot line.

CASE NO. 1091

Petitioner & Property: Mark Attard
16284 Birwood
Lot 78 of Henry Winegar's Eco City
TH24-01-202-028

Petition: Petitioner requests a variance for a 6' high fence.

The petitioner Mark Attard requested a variance from the ordinance to erect a 6' fence along the rear and sides of his property. He explained that the houses in the area of Birwood are built on

about 40 ft. lots. He understands that the idea of the fence ordinance is to retain an open atmosphere in Beverly Hills; however, that open character does not exist in this particular area of the Village. The lack of privacy creates a certain amount of practical difficulty.

Attard submitted a photo of the view from his backyard of a cement block garage in the adjacent yard that is in a state of disrepair. A six foot fence will screen the view.

Questions from the Board were addressed by the petitioner. Attard has lived in the house since February. The applicant was asked if he has considered a 4 ft. fence plus landscaping. He responded that landscaping is a consideration, but a fence would solve the problem in a shorter amount of time. In addition, he would like to retain a large tree in the back yard. Planting effective landscaping to screen the garage would take up one-third of his back yard area.

Byrwa informed the Board that the Village recently employed a code enforcement officer. In addition to the garage behind the petitioner's property, it was observed that there are two garages to the east that are in an extreme state of disrepair. All three property owners received 30-day notice from the Village last week to repair their garages to a structurally sound condition, which includes replacing rotted wood, patching or repairing holes, scraping and painting, and basically bringing the garages up to code or remove them.

The property owner who lives behind the petitioner, Therese Caroselli of 16285 Kirkshire, received notice on July 9 to make substantial repairs to the structure along with the two property owners to the east.

Pagnucco suggested that the petitioner may want to table his request for a 6' fence based on the fact that the abutting neighbor has been directed to improve the garage. It was also suggested that the petitioner consider requesting a 6' fence only along the rear property line.

Attard questioned whether there is a requirement to improve the aesthetics of the cinderblock wall garage.

Byrwa stated that he has not heard from the property owner at 16285 Kirkshire. If no improvements are made after the 30-day period, the Village photographs the structure and issues a court appearance ticket for violation of the property maintenance code. The property owner would be required to appear in court and answer to a judge as to why they are maintaining an accessory building in a state of disrepair.

Kamp contends that the argument that there is a peculiar or exceptional practical difficulty carries less weight when a person purchases property knowing the characteristics of that property and whether it is suitable for their needs. He questioned the existence of an exceptional practical difficulty in this case.

Attard responded that some things are obvious when property is purchased, but there should be a reasonable expectation that the surrounding area is going to be held to the same standard that he was held to when he built a new house on that lot.

Therese Caroselli of 16285 Kirkshire, who lives behind the petitioner, apologized for the condition of the garage. She explained that there was brush and overgrowth for years along the rear fence line due to a lack of property maintenance by the former owner of the Attard property. She could not access the area to cut back the growth. Overhanging branches have worn some of the shingles away from the roof. The cement blocks have never been painted. Caroselli stated that she told Mrs. Attard that she would take care of the garage. She intends to paint the rear of the garage white and repair the roof and wood damage.

Caroselli voiced a concern that the Attards removed her rear fence without talking to her or asking her permission. Her dogs are now running loose without the fence. In addition, there is no longer a way to determine the property line. She requests that a border survey be done to verify where the new fence should be erected.

Caroselli stated that there is a 5' shadowbox fence on the west side of her property that was installed with Zoning Board approval. For the sake of continuity, she has no objection to the same type of fence being erected along the rear.

Kamp stated that removal of the fence and a lot survey is a private matter between the property owners. If the case is tabled, he suggested that documentation be provided with respect to a variance approved for a 5' fence on the abutting neighbors property.

The petitioner Mark Attard requested that the case be tabled until the next meeting.

Byrwa stated that notice of this rehearing will not be mailed to area residents. Interested parties may contact the Village office to check on when the case will be heard. The ZBA meets on the second Monday of each month.

CASE NO. 1092

Petitioner & 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.

Byrwa presented background information on the Westwood Common development. He explained that 17 acres of property was assembled for a residential cluster development, and 23 units were built on 5 acres of land. The cluster option of the Village zoning ordinance allows homes to be built closer together in order to preserve natural features and open space on a site without allowing more density than would be permitted in a conventional subdivision.

Byrwa stated that the ordinance would allow the Village to waive setback requirements if the petitioner were requesting to build a living-space addition to his house in the same location as the proposed deck. It is his opinion that the ordinance does not waive restrictions on structures built

in the side and front yards. The ordinance clearly states that structures are allowed only to the rear of the principal dwelling. In this case, building the deck in the rear would result in a structure built over the concrete driveway and garage.

The petitioner Tom Allen is requesting a variance to build a deck on the side of his house. A practical difficulty exists in that he currently does not have use of outdoor living space off the main floor of the home. In addition, the front door is the only point of egress from mid-level to the outside. It is difficult to access the side or the rear because the house is built on a steep grade. A deck on the side of the house would not only provide outdoor living space but would provide a much needed exit point.

An alternative approach to build off the back of the house would be impractical from a structural standpoint of building a deck over a driveway. It also infringes upon the rights of his neighbors. A deck on the back of the house has been deemed inconsistent with the theme and architecture of the development by the original architect and by the Westwood Common architectural control committee. Much thought and discussion has gone into this over the past few months resulting in unanimous support for this variance from the Westwood Common homeowners association.

The petitioner was asked why his home cannot accommodate a deck without a variance while others in the development can. Allen responded that every home in the association is different. The original owner did not opt to have the deck built off the side. Allen did not know at the time he bought the house that a deck off the back of the house would impact the entire neighborhood.

Diane Ghent of 21 Riverbank, member of the architectural control committee, displayed photographs of homes in Westwood Common all having either front or side decks. The units that back onto the same street as the petitioner do not have rear decks because of the hardship on the neighbors overlooking the beautiful meadow area.

Toni Grinnan of 1 Stonehouse Lane and member of the neighborhood is familiar with the history of the development. She is speaking on behalf of the president of the neighborhood association, Craig Richards. Grinnan related that the petitioner's house included more outdoor living space when it was planned by the developer. The original owner had no interest in a deck and eliminated it from the plan.

Grinnan stated that there is unanimous support in the neighborhood for this plan. The Allens did consider a rear structure, but it became evident that it would impact the neighbors in a negative way. The plan before the Board tonight is one that has been thoroughly discussed by area residents. It brings this house in conformity with other houses in the development in terms of ample outdoor living space. The deck will provide a supervised area where the petitioner's small children can be outdoors. There is 19' between the proposed structure and the next nearest structure, which is more than the development requires.

Phil Keila of 2 Riverbank Drive stated that there are other neighbors of Westwood Common present. He has been asked to talk for Henry Thiele, the neighbor most impacted by this. He cannot be here but gives his full support for the variance requested.

Kamp stated that he does not see a distinction between this case and other cases in any other area of the Village. The configuration of homes on the lots in Westwood Common required deviations from zoning laws. A variance for a deck on this unit should have been requested at the time of approval of the development. Kamp questioned the hardship considering that the petitioner purchased the home knowing the configuration of the home.

A resident of Riverbank clarified that the outdoor area is consistent with architecture throughout the development and was intended to be part of the petitioner's house. The initial property owner decided not to include the deck.

Ted Gillary of 3 Riverbank Drive stated that building on the rear of the petitioner's garage would be a substantial obstruction of the view for his family. He recommends that the ZBA approve the variance.

In answer to an inquiry, Allen stated that the revised deck plan is smaller in scope and the design of the stairs are slightly different.

Decision: Motion by Pagnucco, seconded by Berndt, that the petition be approved based on the uniqueness of this particular community and considering that the enforcement of the ordinance in this case would create a peculiar and exceptional practical difficulty.

Roll Call Vote:

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

Motion carried (8 – 1).

A five minute recess was called at 8:55 p.m. to allow Board members to read material distributed prior to the meeting. The meeting was reconvened at 9:00 p.m.

CASE NO. 1080 (rehearing)

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.

Attorney Joe McMillen was present representing the petitioners William and Lisa Christie. The Christies are requesting a variance from the required 100' minimum lot width to 79.5' to construct a house on the lot adjacent to their home.

The Christies own lots 2351 through 2354. From approximately 1950 until the Christies purchased the property, Dr. Noonan owned the lots.. The Christie home was built on 79.5' of a 212' parcel around 1941. Christie has 53' on one side of his lot that is not buildable and 79.5' on the other side. The Village zoning ordinance adopted in 1959 requires a 100' minimum front lot width in this area. The petitioner is asking for a variance to build a home for his mother and father on the 79.5' lot. The proposed home will conform to all ordinance requirements in terms of front, rear and side setbacks and will be in character with other homes in the neighborhood. A picture of the type of home proposed was submitted to the board.

McMillen cited other homes in the neighborhood built on 94', 90', and 80' wide lots. He contends that the property in question has always been intended to be used as a buildable lot. McMillen believes that the ordinance allows them to build a home on a non-conforming lot. The proposed house will comply with the setback regulations for the district. Because the "lot of record" issue has been resolved, Ordinance Section 22.30.020 allows the granting of the variance on lot width. The lot in question is a single lot of record.

McMillen maintains that the hardship was not created by Mr. Christie. The ordinance prevents him from constructing an acceptable home in character with the neighborhood on what was a buildable lot prior to the adoption of the 1959 ordinance requiring 100' lot width.

The petitioner was asked if he has any documentation that shows Lot 2351 and half of 2352 described as a single lot of record by metes and bounds on a document recorded at the Oakland County Register of Deeds before the effective date of the zoning ordinance. McMillen produced a copy of a recorded deed dated April 24, 1940 showing that Lot 2351 and south half of 2352 is a single parcel. At the request of the Board, the petitioner also submitted copies of tax bills showing that the lots were taxed as individual parcels.

Reference was made to a June 25, 2003 letter from Tom Ryan in which he states the opinion that "the Zoning Board of Appeals does not need to be concerned with the "lot of record" portion of the Zoning Ordinance and only should consider whether or not there is a practical difficulty allowing a dimensional variance for this particular applicant."

Board members discussed the applicable ordinance sections and the lot of record issue at some length. Concern was expressed with the conflicting legal interpretations on the lot of record matter. There were members who did not think that Ryan's letter addressed the specific question asked by the Board. Members questioned whether a hardship has been demonstrated if the existence of a practical difficulty is the Board's only consideration in determining this case.

Rick Marsh of 32344 Mayfair, neighbor to the south, expressed the view that the proposal to build a house on a non-conforming lot is not in character with the neighborhood. A hardship has not been presented in this case. The Board has received a petition signed by residents in the neighborhood urging that it uphold the ordinance.

Attorney Kerry Spencer Johnson was present representing Judy Fiscella and various residents in the area of Mayfair Lane. She asked the Board to request another opinion from Mr. Ryan on the issue of single lot of record. She thinks it is clear that the lots in question are not single lots of record. Johnson questioned whether the historical issues with respect this case can be resolved and suggested that the Board consider how the property was last deeded. She maintains that the petitioner is asking for a drastic variance from the ordinance considering the integrity of the existing homes.

Leslie Michaels of 32415 Beaconsfield related that she inquired as to whether the lot in question was a buildable lot before buying her home seven years ago. She was told by the Village that it was a non-conforming lot. She asserts that the proposed home is not in character with the neighborhood and will adversely affect property values. Michaels urged the Board to make a decision based on the law.

> Motion by Schafer, seconded by Fahlen, to table Case 1080 until the next meeting to obtain an opinion from Village Attorney Ryan.

Fahlen suggested that Schafer and Kamp communicate with Mr. Ryan regarding the matters on which the Board is requesting an opinion.

> Roll Call Vote:
> Schafer - yes
> Verdi-Hus - no
> Berndt - no
> Fahlen - yes
> Johnson - no
> Kamp - no
> Needham - yes
> Oen - no
> Pagnucco - no
>
> Motion failed (6 – 3).

Kathy Valentine of 32405 Mayfair commented that the Village Attorney and not the Zoning Board of Appeals should be asked to interpret the law.

Speaking on behalf of the petitioners, McMillen asked that the case be tabled in order to receive another opinion from Village Attorney Ryan.

Case No. 1080 will be reheard at the August 11, 2003 meeting. Byrwa informed residents that notice of the rehearing will not be mailed to area residents.

ELECTION OF CHAIRPERSON AND VICE-CHAIR
Schafer nominated Verdi-Hus as chair and Kamp as vice-chair. Kamp declined the nomination as vice-chair at this time.

Schafer nominated Maryann Verdi-Hus as chairperson of the Zoning Board of Appeals. There were no further nominations.

Verdi-Hus was elected chair by a unanimous vote of the Board.

Fahlen nominated Todd Schafer as vice-chair of the ZBA.

Schafer nominated Roger Pagnucco as vice-chair. Pagnucco declined because he will be moving out of state.

There were no further nominations. Schafer was elected as vice-chair by a unanimous vote.

ZONING BOARD COMMENTS
None

BUILDING OFFICIAL COMMENTS
Byrwa stated that there is one fence case scheduled for the August ZBA meeting at this point. He encouraged Board members to visit the site of each requested variance before the meeting. Applicants are asked by the Village to stake out a proposed addition or fence for the benefit of Board members who stop by to view the property.

Fahlen asked that Kamp and Schafer talk with Mr. Ryan to clarify the legal opinion requested with respect to Case No. 1080.

Motion by Kamp, seconded by Schafer, to adjourn the meeting at 9:52 p.m.

Motion carried.

Maryann Verdi-Hus, Chairperson	**Ellen E. Marshall**	**Susan Bernard**
Zoning Board of Appeals	**Village Clerk**	**Recording Secretary**