

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

Absent: None

Also Present: Building Official, Byrwa
Council Liaison, McCleary

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 Needham, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, July 14, 2003 be approved as submitted.

Motion carried.

CASE 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 minimum lot width of 100' to 79.5' 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. McMillen stated that he spoke with Village Attorney Ryan since the last meeting and believes that the "single lot of record" issue has been resolved. The petitioner is prepared to submit information demonstrating that the enforcement of the Ordinance creates a practical difficulty.

McMillen reviewed that he presented a history of the property at the last hearing noting the division of the lot as far back as 1940. The lot was buildable until the Village Ordinance was changed in 1959. He cited several other houses that had been built on similar sized lots in the area. Deeds and tax statements were submitted to support the applicant's position. The "lot of record" issue is now clear. The Christies are not asking for a use variance for which a hardship would be required. They are requesting a dimension variance for which they need to show a practical difficulty.

McMillen read a definition of 'practical' from Black's Law Dictionary. He outlined his Court of Appeals research in terms of zoning and planning laws with respect to compliance with the strict letter of ordinance restrictions. McMillen referred to a statute, MCLA 125.293, that allows the Board to grant the variance and Village Zoning Ordinance Section 22.30.020, which he believes also allows the Board to grant the variance.

McMillen related that the Christies intend to build a home for their parents next door to them. Bill and Lisa Christie have been living in the Village for seven years and are not proposing anything that would be detrimental to their home or to the neighborhood. Bill Christie Sr. builds custom homes and plans to supervise the construction of a home that will be in character with the neighborhood. It was emphasized that the proposed home will conform to all ordinance requirements in terms of front, rear, and side setbacks.

McMillen concluded that the Zoning Ordinance is preventing the Christies from constructing an acceptable home in character with the neighborhood on what was a buildable lot prior to the 1959 adoption of the Village Zoning Ordinance. The petitioners are asking the Board to grant this minimal request as they have done in the past.

Board member Schafer commented that there is no doubt that the Zoning Board of Appeals has the authority to hear this case and grant a variance. The appeal is being made on the basis that enforcement of the Ordinance creates peculiar or exceptional practical difficulties in this case. The Board needs to be convinced as to why this situation is unique versus anybody else in the Village with the same situation.

McMillen interjected that the situation is not unique because the Board has granted this kind of variance a number of times. He reiterated that this parcel was a buildable lot before the Ordinance was changed in 1959. He noted that the petitioner's house is located on a 79.5' lot.

Johnson recalled that it was suggested at the July 14, 2003 ZBA meeting that certain members of the Board communicate with Village Attorney Ryan regarding matters on which the Board was requesting a legal opinion.

Schafer related his conversation with Ryan on the "lot of record" issue. In essence, it is Ryan's view that the Board is considering the 79.5' lot standing on its own. The only question before the Board is whether to grant a variance from the 100' lot width requirement to allow the construction of a home that otherwise meets all ordinance requirements.

Richard Marsh of 32344 Mayfair expressed the view that a deviation from the 100' lot width requirement to 80' is excessive and is not in the best interest of the neighborhood.

Michael Henneghan of 18321 Riverside voiced his support for the variance requested by the Christies.

Diana McComas of 19116 Bedford commented that the neighbors are concerned with how a home built on that property would affect the spacious look of the neighborhood.

Robert Tamarelli of 18942 Riverside stated that he lives in the neighborhood of West Beverly where there are a number of homes built on 70-80 ft. wide lots. There are also many lots that are well beyond 100 ft. in width. He does not think the character of the neighborhood changes because a home is built on an 80 ft lot. The neighborhood does not feel crowded. Tamarelli encourages development because it brings value to the neighborhood and to the tax base. He recommends approval of the variance.

Joan Mahoney of 32431 Mayfair stated that she saw a drawing of the house proposed for this lot at a previous meeting, and it did not look like the other homes in the neighborhood. She does not think that the petitioner has demonstrated a hardship that would require granting a zoning variance. Mahoney thinks that the proposal would change the character of the neighborhood and adversely affect property values.

Byrwa displayed a rendering of the house that the petitioners' propose to build on the lot if a variance is granted. Mahoney remarked that the picture is different from a previous drawing shown. Robert Tamarelli questioned how anyone could take issue with a house that looks like the one proposed. He thinks it will add value to the neighborhood.

Judy Fiscella of 32371 Mayfair questioned the validity of the statement that the petitioner's parents will live in the proposed house.

David Fiscella of 32371 Mayfair commented that all the houses on the east side of Mayfair are in conformance with the Zoning Ordinance. He expressed the view that a home built on the lot in question would dramatically alter the balance of that side of the street.

Bill Christie refuted the comment made by Mr. Fiscella that all homes on the east side of the street meet zoning requirements. Christie stated that the house to the south of his property is built only 6' from the lot line.

Leonard Janiga of 18910 Warwick commented that the proposed house would be directly in view of his home. He currently views a lovely wooded area from his property. One of the reasons that he bought in this area was because of the openness between the homes.

Gary Valentine of 32405 Mayfair urged the Zoning Board to uphold the ordinance passed by the Village Council. He added that there is a commonality of wisdom of those who have attended these meetings, signed a petition, or written letters in opposition to the request for variance.

Jim Lewandowski of 18945 Saxon was present in support of the Christies proposal to build a home on the lot in question. He views it as an issue of control and ownership of property. The Village has an obligation to uphold the law, but he hopes that consideration is given to these individuals who have purchased property and have the responsibility of paying taxes on that property.

Claire Janiga of 18910 Warwick supports enforcement of the ordinance. She purchased a home in Beverly Hills because of the spaciousness it offered. She stated that rules are instituted so as not to offend others.

Verdi-Hus read two letters received by the Board. A letter dated August 10, 2003 was received from Melvin Noonan of Auburn Hills, who was the previous owner of the home located at 32380 Mayfair. He states in the letter that "It has always been my desire that this property not be compromised by building another home on a portion of the lot which is, in my opinion, too small to do so. I purchased and maintained that property for that very reason."

A letter dated August 11, 2003 from Richard Marsh of 32344 Mayfair Lane concludes that Marsh believes that the issue of this parcel being buildable under Ordinance 22.30.020 has been answered in the negative, and the only remaining issue is should Mr. Christie be allowed a 20% deviation to build on a 80' parcel when he has no legal hardship.

It was clarified that the petitioner is now seeking a variance on the basis that enforcement of the ordinance creates a peculiar or exceptional practical difficulty rather than the initially submitted appeal based on an exceptional or undue hardship.

Decision: Motion by Fahlen, seconded by Berndt, that the variance be granted on the basis that this is a buildable lot.

Roll Call Vote:

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

Motion fails (4 – 4).

CASE NO. 1084

Petitioner & Property: Roger and Kelli Moore
17965 Birwood
Lot 144 of D. J. Healy's Golfhurst subdivision
TH24-01-105-004

Petition: Petitioners request a deviation to retain the shadowbox fence that is not open to air and light by 35% and to extend into the side yard 19' beyond the rear of the house.

The petitioners Roger and Kelli Moore request a variance from the fence location requirement to allow the 4' high shadowbox fence existing on their property to extend toward the front of the lot 19' further than the rear of the house. They own two 53' wide lots and 10' of a vacated alley. Their home is located on the east lot leaving the west lot and the vacated alley exposed to Birwood and Southfield Road. Normally, a rear yard would be separated by a home placed in front between the roadway and the rear yard. Because their side lot is vacant, they do not have the visual screening or security that is normally provided by a home. The petitioners use the side yard as a back yard.

For the same screening and security issues, the petitioners request that the 4' high shadowbox style fence be permitted. Moore stated that he seeks security primarily for his grandchildren and

dogs. He commented on the traffic and speed of cars turning onto Birwood from Southfield Road. The petitioner distributed an aerial photo of his property.

Board members commented on the closed in appearance of the shadowbox fence in a community that encourages open space. It was noted that the petitioner purchased the property with the knowledge that the rear and side yard was visible from Southfield Road. A few members suggested that there may be a hardship that would justify the location of the fence but did not think that a hardship was demonstrated in terms of the style of the fence. It was suggested that natural screening is an alternative to fencing.

Byrwa expressed the view that the existing location of the fence seems reasonable considering the position of house on the lot and the extra space toward the west of the house.

Jerome Fry of 17988 Buckingham, who lives south of the property in question, had no objection to the fence.

Fahlen commented that the Planning Board conducted a thorough review and proposed a Fence Ordinance that was adopted by the Village Council. A fence shall not extend toward the front of the lot farther than the rear of the house with one exception. The ordinance also requires a fence with a vertical surface area to be at least 35% open to air and light. Fahlen mentioned that this house existed without a fence for 60-70 years. He emphasized that, if the petitioner had applied for a fence permit, he would have been informed by the building official that the fence does not conform with the Ordinance. Fahlen will vote against granting a variance.

Decision: Motion by Fahlen, seconded by Oen, that the request for variance be granted.

Roll Call Vote:

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

Motion fails (8 – 0).

BUILDING OFFICIAL COMMENTS

Byrwa informed the Board that there are three cases pending at this time for consideration at the September meeting.

PUBLIC COMMENTS

A member of the audience commented that he came before the Zoning Board of Appeals in 1996 requesting to build a house on a 40' lot in Beverly Hills, which was approved. He was surprised by the Board's decision this evening to deny the variance requested by the Christies.

Motion by Berndt, seconded by Fahlen, to adjourn the meeting at 8:32 p.m.

Motion carried.

Maryann Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary