

Present: Vice-Chair Schafer; Members: Berndt, Brady, Fahlen, Needham and Stearn

Absent: Johnson, Oen and Verdi-Hus

Also Present: Building Official, Byrwa
Council Liaison, Taylor
Council members, Pfeifer and Koss

Vice-Chairperson Schafer 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 Stearn, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, March 22, 2004 be approved as submitted.

Motion carried.

CASE NO. 1107

Petitioner: Terry McGovern, McGovern Building
4120 W. Maple Road
Bloomfield Hills, MI

Property: 19200 Devonshire
Lots 2651 and 2652, Beverly Hills #7
TH24-02-182-010

Petition: Petitioner requests a rear yard deviation from the required 40' open space to 38' and a side yard deviation from the required 15' open space to 7' for a one-story rear addition.

Schafer reviewed that this case was heard at the previous Zoning Board of Appeals meeting. The petitioner requested that his case be tabled at that time and reheard at tonight's meeting. The minutes of the March 22 meeting were approved by the Board.

Terry McGovern from McGovern Building was present representing the homeowner Joe Rosenberg, who is requesting a variance to build a master bedroom and bath onto the rear of his ranch home. At the last meeting, the Board asked the applicant to look at the floor plan and attempt to minimize the variance to comply with the rear yard setback requirement. McGovern related that they have looked at other houses and designs. A boundary survey was conducted, which revealed additional side yard space and will minimize some of the concerns expressed at the last meeting.

McGovern addressed the hardship involved in this case. It is proposed to add a master bedroom suite while maintaining the existing architecture and design of the 1956 ranch home so it will not appear as an addition. He noted that the house was constructed prior to the adoption of the

Village Zoning Ordinance. What we are trying to do is to make Mr. Rosenberg's present home convenient and accommodating and fit a life style.

The distance between the petitioner's home and the adjacent home to the east is 25 feet. According to the landscape experts and arborists contacted by the applicant, there is adequate airflow and drainage so as not to harm existing vegetation. The present site lines will not be affected any further than they are currently with the trees on the property.

McGovern does not think that the proposed plan is contrary to public interest or inconsistent with the intent of the ordinance, nor does it adversely effect property values in the neighborhood. Area residents have been contacted about the proposed addition since the last ZBA meeting. The goal is to take a two-bedroom house and turn it into something that is more useful for the present owner.

McGovern displayed a photograph that represents an example of what a second-story addition of the same size would look like on a similar house in Beverly Hills. He does not think that a second story addition would be looked upon favorably by the neighbors. The proposed addition would not change the character and design of the house.

In answer to an inquiry, Byrwa related that a variance is not required to build a second story addition that follows the footprint of the first floor of an existing house.

McGovern produced a boundary survey sealed by a licensed surveyor for the Board's review. It was clarified that, according to this survey, the distance between the house and the side yard will be 9.7 feet and the distance from the rear of the addition to the back lot line will be 36.8 feet. It appears that there has been 3 ft. gained on the side yard and 1.2 ft. lost from the rear yard setback with the new survey.

The petitioner was asked by the Board why he could not reduce the floor plan of the addition by 3 ft. in order to comply with the 40 ft. rear yard setback. McGovern explained the layout and size of the proposed master suite. It is proposed to provide access without making the rooms too small. The configuration of the addition is necessary in order for the structural elements and architectural design to be consistent with the existing home. The master suite addition will be 540 S.F.

Rosenberg stated that he has researched the type of work being done in the Village. He looked at a number of properties where variances from the Zoning Ordinance have been granted for additions with respect to both the side and rear yards. Examples that he has observed and photographed are representative and consistent in nature to what he is trying to achieve. He submitted pictures to the Board.

Rosenberg also submitted a letter from Michael Weiner, the arborist whose earlier letter was submitted by Ms. Schlie at the last meeting. A letter dated April 7, 2004 explains that the proposed construction will have no impact on the adjacent neighbor's trees.

Additionally, a letter dated April 12, 2004 was presented this evening from landscape architect Frank MacDonell, who further assures the Board that no harm will come to the trees on Ms. Schlie's property. Rosenberg displayed a picture that shows where the trees are in relationship to the neighbor's patio and in relationship to the proposed addition. The trees screen her patio and are taller than the proposed addition.

There is a perception that this addition will have a negative effect on property values. Rosenberg has reviewed the assessment records for his house and the adjacent neighbor's home, and found that the assessed value has risen on both homes. What he proposes to do will add value to his home and demonstrate that Beverly Hills is a solid and desirable place in which to live. His addition is an example of what can be done to upgrade the housing stock and make it more suitable for contemporary families and their lifestyles.

Rosenberg stated that he sought advice on what constitutes an appropriate and marketable improvement in the area. He provided the Board with a letter dated April 12, 2004 from the owner of Cranbrook Realtors, which affirms the validity of the proposed addition from the standpoint of marketability and value.

Rosenberg commented that he has reluctantly imposed on his neighbors by asking them to review his proposed addition and sign a petition indicating that they have no objection to what he proposes to build. Board members are in receipt of a petition signed by 15 affected property owners. Rosenberg noted that the two neighbors who abut his rear yard have no objection to granting the variance for the addition.

Rosenberg concluded that approval of the addition will allow him to turn a 2 bedroom, 1½ bath home into what everyone would acknowledge is the desired norm for a single family residence. If the variance is granted, his house will become a 3 bedroom, 2 ½ bath single story ranch of just under 2500 SF.

Schafer stated that each case heard by the Board stands on its own merits. There is no precedential value assigned to any case that has been heard before. He reminded everyone that there are two main bases on which the Board can grant a variance of this type. One is that there are peculiar or exceptional practical difficulties that would cause this body to waive the law that applies to everyone as it applies to this particular property. The second basis for granting a variance is that the enforcement of the ordinance would create exceptional or undue hardship. Those are the standards that petitioners must meet. Schafer added that the ZBA consists of nine members. Five affirmative votes are needed to grant a variance.

Roy Albert of 19341 Devonshire signed a previous letter in objection to the petition. He maintains that the addition would create adverse environmental conditions. He thinks that the openness of the required side yard as set forth in the ordinance should be retained.

Maryann Schlie of 19186 Devonshire, adjacent homeowner to the east, had questions and comments on the recent boundary survey that altered the previous dimensions of the petition. She concurs that the addition will increase the value of Mr. Rosenberg's property but maintains that it will not increase her property value. Schlie indicated that she will view brick and mortar

from her Florida room. She expressed concern about the effect of the addition on her trees. Schlie submitted a three-page document from Jim Portersfield, certified arbor consultant, who places a value on her trees and sets forth specifics on spacing that would preserve the trees.

Schlie does not believe that practical difficulty has been demonstrated in this case. In her opinion, the petitioner's problem is self-created, and other building options can accomplish the same result without compromising the Zoning Ordinance. Schlie stated that she bought her property in Beverly Hills 14 years ago because of the open and treed lots. In answer to an inquiry, Schlie stated that she would prefer a second story addition.

Frank Guttman of 19411 Warwick commented that he would not want to see a second story addition on the house. It has been his observation that two-story additions are more difficult to sell. The petitioner is asking to make his home similar to other houses in the neighborhood. The proposal will render his house more suitable for living and maintain the harmony of the structure by continuing the existing line of the house.

A petition submitted by the applicant has been signed by the following property owners living within a 300 foot radius and who have no objection to granting the requested variance for the proposed addition:

| | |
|-------------------|------------------|
| Fred Guttman | 19411 Warwick |
| Thomas Morgan Jr. | 19344 Warwick |
| Gary Grabowski | 19251 Warwick |
| Lynn Szykiel | 19231 Warwick |
| Takashi Yagihashi | 19340 Devonshire |
| Bernard Friend | 19344 Devonshire |
| Alex Shoshiyev | 19335 Devonshire |
| Robert Serazin | 32010 Inglewood |
| Michael Deronne | 19126 Devonshire |
| George Kale | 19145 Devonshire |
| Larry Peterson | 19191 Devonshire |
| Mark Artinian | 19320 Devonshire |
| Frank Mottershead | 19332 Beverly |
| Kathleen Thayer | 19312 Beverly |

The Board is in receipt of letters mentioned previously from Michael Weiner, certified arborist, tree expert Frank MacDonell, and from George Ulrych from Cranbrook Realtors.

At the request of the Board, Chris dellaCorte, architect from McGovern Building explained the practical difficulty with reducing the size of the proposed addition. The addition will be 20' x 27' or 540 S.F., which is a modest size for a master bedroom suite. The architect is trying to design a master suite that is comparable to what is being built in the area.

Byrwa displayed three pictures with an overhead projector and summarized the two variances requested in accordance with the boundary survey submitted by the applicant. The petitioner is proposing a 36.8 ft. rear yard setback in lieu of the required 40 ft. The survey shows the distance

from the addition to the side lot line as 9.7 ft., which is 5.3 ft. less than the required 15 ft. side yard setback.

Berndt understands the hardship with the pre-existing non-conformity in terms of the side yard setback. However, he is struck by the fact that no attempt has been made to decrease the size of the proposed addition to comply with the rear yard setback.

Rosenberg responded that a 14 ft. wide bedroom is too small in terms of long term market value and applicability.

Jerry Lax, attorney for Mr. Rosenberg, maintains that there is no absolute definition of a hardship. The Board may have trouble finding a hardship in what constitutes a present-day standard as to a particular room. The typical variance request to build a room or a porch could invariably be built two feet smaller, but it would not accommodate the needs of a family as well. Lax believes that it is difficult to define hardship when someone wants to do something that is adequate to accommodate his needs and also consistent with contemporary standards and adds to the marketability of the house. If the dimensions of the lot prevent the applicant from doing that, it seems that it is not an unreasonable definition of hardship. If this structure has to come 2.5' closer to the rear lot line, where no one objects, Lax does not think the Board would be abusing its discretion to conclude that the variance satisfies the standard of hardship and the other criteria it must apply.

Decision: Motion by Fahlen, seconded by Stearn, that a deviation for the side lot line of 5.3' be granted since it is a continuation of an existing line of a house that was built in 1957 prior to the Village Zoning Ordinance.

Schafer disclosed that he is acquainted with the petitioner's counsel, Jerry Lax, through a working capacity. This will not impact his judgment on this matter, and Schafer will not recuse himself from voting on this case.

Roll Call Vote:
Motion carried unanimously.

Motion by Fahlen, seconded by Stearn, that the 3.2 ft. variance from the required rear yard setback be granted based on the location of the addition on the lot as requested by the petitioner.

Roll Call Vote:
Brady - yes
Fahlen - yes
Needham - no
Schafer - no
Stearn - no
Berndt - no

Motion fails (4 no – 2 yes).

A brief recess was called at 8:44 p.m. The meeting reconvened at 8:48 p.m.

CASE NO. 1112

Petitioner: Patrick S. Durbin
21751 W. 9 Mile Road, Ste. 133, Southfield

Property: 32365 Robinhood Dr.
Lot 71 of Nottingham Forest #3
TH24-04-210-013

Petition: Petitioner requests a side yard deviation from the minimum 15’ open space to 9.6’ for a side addition.

Byrwa referred to a photograph of the site displayed on the overhead projector to explain the proposal to construct a garage.

Patrick Durbin of 32867 White Oaks Trail was present on behalf of the property owner to present his proposal to construct a new garage on the property. The owner requires more garage space to house personal vehicles. The existing garage will be used for a single car space and storage. He outlined the proposed location of the garage. The rear line of the garage will line up with the rear line of the home. It is proposed to keep a single-car door on the existing garage space and create an oversized mud room and storage area in the other half of the garage. The new garage space and existing garage would open into the storage area.

To achieve a 24’ garage width, the structure would infringe 5.6’ into the side yard space. Durbin stated that the petitioner could build a 22’ wide garage if the side yard becomes an issue. The architectural detail would blend in with the home. There is 28’ between the proposed garage and the house on the adjacent property. The home was built in 1961.

Board members explored whether an alternative placement of the garage was available that would comply with the ordinance. In answer to an inquiry, Byrwa stated that a detached structure would have to be located behind the house and no closer than 5’ from the side property line.

The following residents signed a petition stating that they support the Fassett family in their proposed addition of an attached garage to their residence located at 32365 Robinhood Drive.

| | |
|---------------|---------------------|
| The Hillmans | 32533 Robinhood |
| The Werthmans | 32565 Robinhood |
| The Barczaks | 32343 Robinhood |
| The Sandes | 32321 Robinhood |
| The Sedmans | 22760 N. Nottingham |
| The Morgans | 22730 N. Nottingham |

Decision: Motion by Stearn, seconded by Fahlen, to grant the variance due to the practical difficulty created by the fact that the existing driveway is already in that location

and that there is a 28.4' distance between the proposed addition and the residence to the north.

Roll Call Vote:

Fahlen - yes
Needham - no
Schafer - yes
Stearn - yes
Berndt - yes
Brady - no

Motion fails (4 yes – 2 no).

Byrwa clarified that it is possible for a petitioner to resubmit a plan if it is revised by any measurement in excess of one foot.

CASE NO. 1113

Petitioner/Property: Robert J. Fedosky
18870 Beverly Road
Part of Lots 2286 and 2288 and all Lot 2287
Beverly Hills #6, TH24-02-256-013

Petition: Petitioner requests a deviation from the minimum 40' rear yard open space to 38.8' AND a side yard deviation from the minimum 15' open space to 10.10' for a one-story rear addition.

The petitioner Robert Fedosky stated that he is requesting variances in order to construct a one-story family room onto his house, which was built in 1955. Due to the position of the house on the property and floor plan of the home, it would not be practical to build an addition based on current setback requirements. He has lived in the house for 47 years.

Byrwa displayed two photographs of the property in question and explained where the addition is proposed to be located. The house is in a non-conforming status.

Board members reviewed the proposal with consideration given to alternate locations for the addition. The petitioner explained that the building addition is 20' wide x 14' deep. Reducing the room depth to 12' would be too narrow in that dimension.

Berndt believes that there was an effort to take a property where the lot size conforms to a prior standard and build an addition with a significant side yard setback that does not currently exist with the rest of the house. The applicant is constrained by the detached garage in the rear and the driveway for that garage. There is true practical difficulty in providing any adequate living space without some variance from the ordinance.

Decision: Motion by Needham, seconded by Brady, to grant the variance requested due to the exceptional practical difficulty of constructing this addition on the lot in any other way.

Roll Call Vote:
Motion carried unanimously.

Comments on Case No. 1112

Albert VanKempen of 32507 Robinhood Drive commented that he missed the opportunity to comment on Case No. 1112. He stated that all of the houses in the subdivision have two-car garages, and all of the houses are more than 15' from the lot line. He objected to the applicant's proposal to build another two-car garage on a house that has an existing two-car garage. VanKempen was informed that the Case No. 1112 was denied by the Zoning Board.

CASE NO. 1114

Petitioner/Property: William Colenso
19360 Beverly Road
Pt. of Lot 18, Supervisor's Plat #14
Pt. of Lot 2669 of Beverly Hills #7
TH24-02-183-007

Petition: Petitioner requests a deviation to build a deck in the side yard.

Schafer reviewed that a similar form of this case (Case No. 1110) was heard at the last ZBA meeting and not accepted at that time. The petitioner is requesting a variance from the ordinance to build a deck in the side yard.

The petitioner William Colenso reviewed that there was a concern expressed at the last meeting with people being able to view the deck from the street. The distance from the edge of the deck to Beverly Road is 110 feet. Colenso revised his plan to include landscaping to screen the deck from the road. He proposes to use lattice to screen the foundation of the deck.

The drawing submitted with the application shows the location of trees. The petitioner did not specify the type or size of trees or shrubs that would be planted.

Colenso stated that the house directly to the west has a 20' deck extending into the side yard. There are two houses on nearby Alden Court with decks in the side yard. The petitioner stated that he has talked to neighbors who would be affected by the proposed deck. Colenso discussed his plans with his neighbor to the west, which resulted in reducing the size of the deck from 14' to 12'.

Photographs of two views of the property in question were displayed on the overhead projector. The house has a door wall on the side of the house and a door at the rear of the house. Both doors require steps or a deck to access grade level.

It was indicated that the Board is constrained by the legal requirement to grant a variance in the case of a hardship or difficulty. Members need to be convinced of an exceptional practical difficulty or real hardship imposed by compliance with the Zoning Ordinance. Berndt commented that he needs to be convinced of the reason why this hardship was created.

Fahlen commented that it may be a hardship that the petitioner designed his house with a door wall on the side of the house. It may be a hardship to remove the door wall.

Brady suggested that the applicant specify the size and type of trees and shrubs that will be planted to screen the deck.

The petitioner was informed that he has the option of tabling his case until a future meeting.

Dorothy Pfeifer of 160 Charrington Court stated that the existing door wall requires a stairway or some kind of exit to the ground level to meet code. Byrwa concurred that steps down to grade level are required in order for the petitioner to receive his final building permit for the structure.

Mrs. Colenso commented on the layout of the house and how the door wall fits in with the character and design of the room.

William Colenso asked that his petition be tabled. He understands that he will be required to convince five members that there are peculiar or exceptional practical difficulties or an exceptional or undue hardship that would require the granting of the variance.

Bob Walsh of 20655 Smallwood Court commented that the house appears to be built with the deck in mind. The same problem exists for the second door at the rear of the building.

CASE NO. 1115

Property/Petitioner: Howard Hanson
31400 Kennoway Court
Part of Lots 1 & 2 of Kennoway
TH24-03-453-001

Petition: Petitioner requests a deviation from the average front yard setback of 73' to 30' for an attached garage AND a deviation from the minimum 40' rear yard open space to 24' for a conservatory.

Randy Travis with Canterbury Conservatories was present representing the homeowner Howard Hanson. He referred to a mortgage survey drawing on which the proposed additions have been added. Travis pointed out the odd shape of the lot located at the end of a court. It is proposed to construct a 20' x 26' conservatory in the back corner of the property and a garage addition that extends out past the present garage. The present garage will be used for storage space because the house has no basement.

The portion of the lot where the additions are proposed is narrow. The only house within 200' on the same side of the street is the adjacent neighbor's house, which has a 73' front yard setback. Three-quarters of the petitioner's house is within that average front setback dimension.

The distance from the proposed conservatory addition to the back property line will be 24'. The distance from the house to the rear lot line is currently 30'. The existing front yard setback is 35.9'. The distance from the garage addition to the front lot line will be 30'.

Kathleen Berwick of 31381 Kennoway Court, resident across the street, voiced several concerns with the proposal. She commented that she purchased her home 25 years ago because of the large lots. Berwick commented on the poor drainage in the neighborhood and noted that the petitioner has a lot of asphalt in the front of his home. She is concerned that covering up more of this property will adversely impact water problems in the neighborhood. Berwick maintains that the proposed addition will take away from the look of the neighborhood.

Questions from Board members on the proposed additions were addressed by Travis. Travis asked that his case be tabled until a future meeting.

ZONING BOARD COMMENTS

None

PUBLIC COMMENTS

Dorothy Pfeifer of 160 Charrington Court commended building official Byrwa for using a digital camera and overhead projector to display photographs of properties in question and discuss the requests for variance.

Pfeifer commented on Case 1107. She noted that the house on Devonshire was built prior to the adoption of the Village Ordinance and is in violation of two setback requirements. It was not mentioned that the house is in violation of the front yard setback. Pfeifer expressed the view that the petition represents overbuilding on the lot. She noted that she is more concerned about the extension of the side yard than the rear yard setback. Pfeifer thinks that the Village ordinance should address the big foot house issue.

Fahlen remarked that he has sat on the Zoning Board of Appeals for almost 650 cases. The Board has approved about 99% of the cases involving an extension of an existing deviation.

Dave Taylor commented that he has a lot of respect for the decisions made by the Zoning Board of Appeals.

Stearn informed the public that the Zoning Board enforces ordinances and is allowed to grant variances for specific reasons. Individuals who have issues with specific ordinances should address Council with their concerns.

Schafer welcomed members of Council in attendance this evening and congratulated the newly elected Council members.

Motion by Berndt, seconded by Brady, to adjourn the meeting at 10:12 p.m.

Motion carried.

Todd Schafer, Vice-Chair
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary