

Present: Chairperson Schafer; Vice-Chair Berndt; Members: Napier, Oen and Stearn

Absent: Brady, Fahlen, Needham and Verdi-Hus

Also Present: Building Official, Byrwa  
Council Liaison, Taylor  
Council Member, Pfeifer

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.

Building Official Dave Byrwa announced that petitioners William and Lisa Christie have requested that Case No. 1137 be carried over to the November 8, 2004 Zoning Board of Appeals meeting in order to have a full complement of Board members present. Five of nine members of the Board are present this evening.

Residents in the audience requested that notice of the rescheduled hearing of Case 1137 be mailed to area residents. They were informed that it has not been Village policy to mail a second notice of a hearing that has been carried over to another meeting. Meetings are posted and agendas are available at the Village office prior to the meeting.

Schafer informed the petitioners present that an affirmative vote of five members of the Board is required in order for a variance to be granted, and there are five Board members present this evening. An applicant has the option, prior to a vote being taken, to defer a decision on their case to the next meeting.

#### **APPROVAL OF MINUTES**

Berndt made a correction to the word ‘bearing’ under the “Approve Minutes” heading on page 1.

Motion by Oen, second by Napier, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, September 13, 2004 be approved as amended.

Motion passed.

#### **CASE NO. 1136**

Petitioner and Property: R. E. Muenchausen  
18326 Riverside  
Lots 1761 and part 1762  
Beverly Hills #4, TH24-02-231-001

Petition: Petitioner requests a rear yard deviation from the required minimum 40’ open space to 33’ for a proposed one-story rear addition.

Byrwa stated that the house located at the corner of Riverside and Buckingham was constructed in 1952. The petitioner is proposing to remove an existing screen porch and build an 18’ x 25’

addition off the rear (northeast) corner of the house. The petitioner is requesting a rear yard deviation from the required minimum 40' open space to 33'. Byrwa displayed photographs of the property and pointed out the location of the proposed addition.

The petition reads that the applicant is requesting a variance because enforcement of the ordinance creates peculiar or exceptional practical difficulties and exceptional or undue hardship. The Board asks that petitioners indicate what is unique about their particular property or situation. Petitioners need to show how compliance with the strict letter of the requirements of the ordinance unreasonably prevent them from using the property, that granting the variance does substantial justice to the petitioner without doing injustice to the neighbors, that their request is the least amount of variance to accomplish the intended purpose, and that the problem is not self-created.

Gene and Nancy Muenchausen distributed a packet of information to the Board members and presented their reasons for requesting a variance. Nancy Muenchausen introduced neighbors who were present in support of the request for variance. Bob and Sally Engle of 18350 Riverside live directly across the street, and Frank and Judy Cancro of 18382 Riverside live two doors down. The petitioners also submitted a statement of support signed by property owners of 15 different properties in the area. The petition states that the neighbors are aware of the petition for a variance to the Zoning Ordinance and have no opposition to this petition. Muenchausen stated that they did not receive any negative comments on their proposal from the neighbors that they approached.

Gene Muenchausen stated that they have been Beverly Hills homeowners for the last 22 years and plan to remain in the Village when they retire. There is a need for more living space with their upcoming retirement as well as one-floor traffic for mobility needs of senior citizens and a person recovering from heart surgery. Added floor space is also needed to accommodate a growing extended family. It is difficult to entertain in their small home.

Muenchausen referred to the irregular shape of the lot, which restricts the placement of the addition. He explained how the addition cannot be placed in a different location on the lot and support the type of roof or cathedral ceiling indicated in the plan. Muenchausen displayed a floor plan and plans for the addition, noting the location of windows and doors. The addition will not negatively impose on the views of any neighbors, market value, movements, or living quality. Muenchausen stated that they have a history of maintaining both the interior and exterior of their residence.

Questions from Board members were addressed by the applicants. It was indicated that the homeowners who live directly behind the property in question, Bob and Karen Daykin of 18245 Buckingham, have signed the petition.

Kathleen Berwick of 31381 Kennoway Court commented that she cannot understand why people want to build additions that result in less open space on the property and that contribute to drainage problems.

Stearn referred to a letter dated October 6, 2004 from Village attorney Tom Ryan outlining four standards that must be demonstrated by a petitioner to establish that a practical difficulty exists which is sufficient to warrant relief by the granting of a dimensional variance by the ZBA. He asked for a clear explanation from the petitioners as to their practical hardship or exceptional practical difficulty other than inconvenience.

It was noted that the petitioners have a right to ask that their case be tabled. Byrwa explained that it takes a majority of the assigned members of the Board to grant a variance. There are nine assigned members, and a majority is always five. Because there are five members present this evening, the petition would fail if one member voted against granting a variance. There is no additional fee for deferring decision on a case. If the vote is taken and the case fails, the petitioner could bring back a revised petition upon payment of an application fee.

Mrs. Muenchausen stated that the neighbors two doors down submitted a request for variance with the same setbacks and received approval by this Board. Byrwa noted that the neighbors' petition was granted by a close vote of the Board. Schafer added that no two cases are alike, and the composition and thinking of the Board may change.

Mr. Engle stated that it benefits the Village when people renovate and upgrade their homes as is being requested by the petitioner.

Dorothy Pfeifer of 160 Charrington Court observed that the house fronts on Riverside with the back and side yard abutting Buckingham. This case is somewhat unusual due to the placement of the house on the lot.

Berndt referred to the four guidelines outlined by Attorney Ryan to determine the issue of difficulty. He noted that the petitioner displayed the floor plan and pointed out building codes relating to windows and natural light. The inability to build the structure elsewhere on the lot does come into the picture when defining practical difficulty. Berndt thinks consideration should be given to surrounding homes and what is reasonably expected of someone living in this community. The house in question is small for a home in Beverly Hills. There is strong support from the community to approve the variance. The request is unique in that the house is located on a corner of a major residential thoroughfare. The house is crowded on the lot so there are placement issues.

Schafer noted that the depth of the lot is between 130 and 133' while other homes along Buckingham have lots that are nearly 140' deep. A deeper lot would make the variance request unnecessary. He supports the petition given the size of the lot in this neighborhood.

Schafer read a letter from Mr. and Mrs. Engle of 18350 Riverside in support of this case. He referred to the statement of support signed by 15-16 neighbors.

Oen commented that he does not think that the 33' rear yard is unreasonable. He will support the request for variance to build a one-story addition on this odd shaped lot. Napier expressed support of the variance based on the side yard/backyard situation on this corner lot.

**Decision:** Motion by Berndt, second by Oen, that the variance be granted as requested based on the practical difficulty presented by the unique size and shape of this corner lot as well as the placement of the house on the lot.

Roll Call Vote:  
Motion passed (5 – 0).

**CASE NO. 1138**

Petitioner and Property: Elizabeth Ross  
18266 Devonshire  
Part of Lot 1931, all of 1932  
Beverly Hills #4, TH24-02-279-028

Petition: Petitioner requests a side yard deviation from the required 15' minimum open space to 7.5' for a two-story addition.

Byrwa stated that the petitioner is requesting to construct a two-story addition off the rear of the house, which was built in 1954. The ordinance requires a 12.5 ft. side yard setback on one side and 17.5 ft. on the other side in an R-2 zoned district. The petitioner proposes to increase the existing non-conforming side yard setback of 9.5' to 7'-5" to expand the garage area and to construct a two-story master bedroom addition. Byrwa displayed photographs of the property and house.

Petitioner Elizabeth Ross stated that architect and neighbor Robert Stempien has been working on a plan for the addition. She is requesting a variance to construct the addition at 7'-5" from the lot line. Ross stated that her family has been growing since they purchased the house in 1993, and there is a need for additional space. The proposed addition will accomplish adding a second full bath as part of a master suite above the garage.

Ross also explained that there is no access to the house from the current attached garage. The proposed plan will add a mud room and laundry on the first floor and provide access to the home through the garage. A master suite will be added above the garage. The current home has three bedrooms.

Architect Robert Stempien at 18245 Devonshire stated that the current garage is undersized with an inside dimension of 21 ft. wide and 19 ft. deep. Most parking spaces are 20' deep. The petitioner is attempting to accommodate their cars and other storage. A 2' variance is requested for the garage and to build a master bedroom suite on the second story. There is no access to the house from the existing garage.

Stempien stated that the property is in an R-2 zoning district that requires a 12.5' ft. setback on one side and 17.5' on the other side. He surveyed the side yard setbacks of all the homes on each side of Devonshire and found that 75% of the homes do not conform with the minimum side yard setback requirements. He noted how many of the homes have received variances over the

past 16 years. There were five variances approved for side yard setbacks with the unanimous vote of the Zoning Board of appeals.

Stempien displayed the floor plan of the home to illustrate the reason for locating the master bedroom suite as proposed. It is anticipated to utilize the footprint of the existing garage plus an additional two feet to accommodate needed space. The addition cannot be constructed at the rear of the house because there is a vaulted ceiling that extends from the current wall line on the second level all the way back over the kitchen and living room area with fireplace. Building in that location would destroy the ceiling currently in place. The obvious option was to build over the garage.

Stempien displayed a drawing showing the two-car garage, an area for storage, laundry room and a mud room that connects directly into the house. The plan shows that the existing garage line has been extended across the front of the house to create an entrance area to the house. Plans for the master bedroom suite were reviewed. The roof line will be dropped to make the second story addition less obtrusive and retain the character of the house.

Stempien stated that the proposed plan increases the non-conforming side yard by two feet. There is an option to pull back the second story by 2.5' and retain the 2' expansion on the garage. He urged the Board to consider the restrictive nature of the Zoning Ordinance considering that over 75% of the houses on Devonshire do not conform with minimum side yard requirements. Stempien displayed photographs of other non-conforming side yard houses on the block. He noted that a neighbor recently constructed an addition over an existing garage, which is 4.5' away from the property line.

Berndt commented on what seems to be a disconnect between the zoning ordinance and the way in which so many of these lots were parceled out and built upon before the adoption of the Village zoning ordinance. The Zoning Board has to consider what is appropriate for the community and for all potential owners of the home.

Berndt believes that there is a practical difficulty in this case in that market expectations in this community call for a modern, reasonable master bedroom suite. The question is what makes this property unique from other non-conforming houses along the street, and why should the non-conformity be increased.

Berndt observed that the houses on the street are high for the distance between the homes. He is concerned about the fire safety of residents and public safety officers. The variance requested will increase a substantial non-conformity. The Board will consider whether this is the minimum variance that could provide relief to the property owner.

Byrwa commented that the building code addresses fire separation distance. It requires that structures or buildings be no closer than 10' to each other.

Berndt believes that it is intent of the zoning ordinance not to encourage the survival of non-conforming structures and to discourage the enlargement of non-conforming structures. The

petitioner has shown that an adequate master bedroom suite can be added without increasing the non-conformity of the footprint.

Stempien stated that the average non-conforming setback on Devonshire is 7' - 3". He maintains that the zoning seems restrictive for this particular area of the Village.

Schafer stated that each case stands on its own merits. The Zoning Board of Appeals is not empowered to deal with possible problems with the zoning ordinance. The Board needs to find that there is something unique about this property, that enforcement of the ordinance creates practical difficulties, and that conforming with the restrictions of the zoning ordinance is unnecessarily burdensome to this particular property.

Stearn and Oen indicated that they had a problem with the request for variance extending two feet beyond the existing non-conforming side yard setback.

Ross reiterated that parking two cars in the garage creates a tight situation with no room for a door to attach the garage to the house. The proposed two feet will provide for an entry to the house.

Stempien questioned whether the Board would allow the petitioner to tear down the existing garage and rebuild if they were to conform with existing wall lines and then find that the foundation will not support a second level.

Berndt stated that a request to rebuild the garage would come before the Board for a variance. Those who have expressed an opinion believe that the petitioner has met the burden of justification if the addition does not increase the side yard setback in its functional footprint. Berndt does not think the burden has been met for expanding the non-conformity on the garage level.

Byrwa stated that the house and attached garage is considered all one structure. When more than 60% of a structure needs to be replaced, the ordinance states that the entire structure has to conform to the current ordinance. If this homeowner plans to remove a couple walls from the garage, it is Byrwa's opinion that the applicant would have every means to put in another footing in the same spot if the Board approves a variance for the addition.

Bill Doherty of 18250 Devonshire, who lives next door to the property in question, had questions about the variance requested. He constructed an addition on his house 14 years ago and kept within the 12.5' side yard setback. He thinks that the non-conformity of existing houses is not a good reason to compromise on requiring the minimum side yard setback. He questioned whether there is an alternative that will allow the petitioner to expand within the rules.

The petitioner asked to table the request for variance until the next meeting. Case No. 1138 will be heard at the November 8, 2004 meeting of the Zoning Board of Appeals.

### **ZONING BOARD COMMENTS**

Berndt proposed that the Zoning Board meet in two weeks in a study session to review criteria and procedures for evaluating cases. Byrwa suggested that the Board have this discussion either prior to or following a regular meeting date rather than schedule a special meeting, where attendance may be an issue. Schafer suggested that Berndt canvas Board members for potential available dates for a study session and ask whether they would rather have a discussion after a regular meeting.

Stearn asked that the Board request authority from Council to have Tom Ryan attend a study session of the ZBA. Byrwa stated that the Village Attorney plans on attending the meeting at which time the Christie case is heard. He could be asked to update the board on procedural and legal issues prior to the November 8 meeting.

Motion by Oen, second by Berndt, to request authorization from Council to have Tom Ryan conduct a study session for the Zoning Board of Appeals on procedural and legal matters for an hour prior to the November 8, 2004 meeting.

Motion passed (5-0).

Given the number of people who are expected to attend the meeting to hear the Christie case, Schafer asked that residents within 300 feet of the property in question be re-notified with respect to case No. 1137.

Berndt stated that he has completed a summary of the last ten years of ZBA cases and can provide an electronic spreadsheet to interested members. The document includes petitioners, locations, requests for variance, and dispositions. In reading through the last 10 years of cases, Berndt found that the Zoning Ordinance does not fit the east side of the Village. He questioned why the Planning Board has not been asked to look into creating another residential district classification that would reflect the setbacks and restrictions that were in place under Southfield Township so that there would not be massive non-conforming areas of the village.

Schafer commented on where he believes the Zoning Board of Appeals stands in terms of Case 1137 that was removed from tonight's agenda. Given the order from the Judge and comments from the attorneys involved, he thinks the Zoning Board should request a closed session with the Village Attorney with respect to this case before the Christie hearing.

Motion by Oen, second by Berndt, to ratify the motion for a study session prior to the next Zoning Board meeting on November 8, 2004 to request a closed session with the Village Attorney to discuss pending litigation.

Motion passed (5 – 0).

Byrwa stated that the Village Attorney will be asked to meet with the Zoning Board of Appeals in closed session at 6:30 p.m. prior to the November 8, 2004 ZBA meeting.

**BUILDING OFFICIAL COMMENTS**

Byrwa stated that the Council and Planning Board will hold a joint meeting tomorrow night, October 13 at 7:30 pm. Council member Pfeifer will be raising lot coverage issues and may ask the Planning Board to review requirements for percentage of lot coverage restrictions. A factor in this issue is the number of non-conforming structures in the area east of Southfield Road. Most of these houses were built in the early 1950s before the adoption of the Zoning Ordinance in 1959.

Pfeifer commented that the ZBA is autonomous and interprets Village ordinances. The Planning Board designs ordinances for Council consideration and adoption. Her concern is that too much of the Village's permeable land is being covered. There are many homes on the east side of the Village that do not conform to the ordinance requirements for setbacks, and there is a practice to extend a non-conforming line of the house. Pfeifer is sometimes uncomfortable with how far that line can extend. The Village has no open space requirement.

Motion by Berndt, second by Oen, to adjourn the meeting at 9:22 p.m.

Motion passed.

**Todd Schafer, Chair**  
**Zoning Board of Appeals**

**Ellen E. Marshall**  
**Village Clerk**

**Susan Bernard**  
**Recording Secretary**