

Present: Chairperson Schafer; Vice-Chair Berndt; Members: Fahlen, Napier, Needham, Oen, Stearn and Verdi-Hus

Absent: Brady

Also Present: Building Official, Byrwa  
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.

Schafer remarked that the Board will recall that Mr. Brady was recused from voting on Case No. 1137 at the November meeting. Brady has decided not to be present this evening because the only case on the agenda is a continuation of that appeal case.

#### **APPROVE MINUTES**

Motion by Stearn, second by Napier, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, November 8, 2004 be approved as submitted.

Motion passed (8 – 0).

#### **CASE NO. 1137 (continuation)**

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

**Petition:** Petitioner requests a deviation from the minimum 100' lot width to 79.5' and a deviation from the 16,000 square feet minimum lot size to 12,643 square feet to construct a new residence.

Schafer reviewed that this case was heard on November 8, 2004 at which time the Zoning Board of Appeals voted 4-4 on a motion to grant the variances requested. Because there was no affirmative decision on the matter as required by Judge Tyner's Order for Remand, the case was tabled for direction from Village Attorney Ryan.

Schafer provided background on Case No. 1137 noting the 4-4 vote of the ZBA on August 11, 2003 and the subsequent July 28, 2004 Court Order remanding the case to the Zoning Board for a majority decision and findings of fact supporting the decision following a new hearing on the merits.

Schafer commented that the 4-4 vote of the Board at its November 8 meeting would normally be dispositive pursuant to State law and ZBA guidelines. The request for variance would not be granted and the petitioner would be left to reapply under different circumstances or appeal

to the Circuit Court. However, Case No. 1137 was before the Board on remand from the County Circuit Court, and the ZBA was under an obligation to render an affirmative vote.

Schafer related that he had a couple of conversations with the petitioner and his counsel following the November session. He discussed his concerns with Mr. Christie and relayed why he was not able to vote in favor of the variances as stated. Schafer's objections were based primarily on the substantial justice test. He did not feel that substantial justice was being afforded to others in the district, specifically the immediate neighbors. Schafer stated that he believes that the petitioner is willing to accept additional conditions on a motion to grant the variances. It would be appropriate at this time to entertain a motion to be followed by Board discussion.

Decision: Motion by Berndt, second by Verdi-Hus.

Based upon satisfactory demonstration by the petitioners that they cannot reasonably construct a home on their property as otherwise permitted in this zone without this minimal relief, the variances requested are the minimum required to do justice to the petitioners and that such variances do substantial justice to other property owners in the district, the public interest, health, safety and general welfare will not be harmed, the situation is unique in that this is the only parcel of its size not built upon in the area and unique in terms of the prior subdivision of the property, the tax parcels and the siting of the current home, and mistakenly, but acting in good faith, believing County records to reflect a separate lot of record, they are not responsible for this difficulty,

It is moved that, contingent upon the petitioner securing the division of their current 212 foot frontage lot on Mayfair Lane from the Village of Beverly Hills so as to establish two separate lots under Beverly Hills law, and such lot split irrevocably uniting the parcels currently identified by Sidwell numbers 24-02-180-005 & -006 as a single lot and creating a single lot from the parcel currently identified by Sidwell #24-02-180-007, and the petitioner constructing an otherwise conforming single family residence of no greater than 2,760 square feet of total space on the ground floor (whether living space or attached garage), and of no greater than 3,700 square feet of living space overall, and construction of any accessory structure being limited to a maximum size of 500 square feet, and construction of any accessory structure being either located at least 10 feet from any rear or side lot line or at least 5 feet from any rear or side lot line if Evergreen screening along the side(s) nearer than ten feet to a lot line is permanently maintained not less than 6 feet in height and with a plant-to-plant spacing of not more than 2 feet, and no further variances in connection with the "siting" and construction of the new residence on the new lot (created from the parcel currently identified by Sidwell #24-02-180-007) will be requested and /or granted (although future variances may be applied for in connection with the remodeling of the residence by future owners thereof,

Variances from Section 22.26 “Schedule of Regulations” be granted reducing the lot width requirement from 100 feet to 79.5 feet and the minimum lot area from 16,000 square feet to 12,643 square feet for the parcel identified by Sidwell #24-02-180-007.

Schafer asked if the petitioners or their representative would like to comment on whether the conditions of the motion are acceptable.

James Derian, attorney representing the Christies, received clarification of the proposed conditions in terms of total square footage of living space allowed. Derian stated that the conditions are acceptable to the petitioners and asked the Board to approve the motion.

Schafer read a letter dated December 12, 2004 addressed to the Board from Richard and Nancy Marsh of 32344 Mayfair. The letter expressed strong objections to the Christies’ requests for variance that would allow construction of a home on a 79.5 ft. wide parcel. They do not believe that the Christies meet either criteria for a variance from the strict application of the 100 ft. minimum width for a buildable parcel and that the Christies are able to make improvements to the existing house without a variance. The Marshes believe that the petitioners’ purpose of developing a house on the 79.5’ lot is to make a profit.

The letter from Richard and Nancy Marsh also states that they believe that there is a conflict of interest between Board member Verdi-Hus and Ms. Christie because they are co-members of the Village Beautification Committee.

Maryann Verdi-Hus responded that she and Ms. Christie have not been on the Beautification Committee together for at least 18 months, which is the period of time when this case was heard by the Zoning Board of Appeals. Verdi-Hus added that her conversations with Ms. Christie prior to that time were only indicative of the community beautification awards.

Schafer opened the floor for public comments and asked those who speak to limit their comments to the changes and new conditions outlined in the motion.

Richard Marsh of 32344 Mayfair questioned how requiring an Evergreen screen will protect the spaciousness of the area. He believes that the motion will allow a house to be built on an 80 ft. lot when the majority of the houses in the area are built on lots of 100 ft. width or greater.

Claire Janiga of 18910 Warwick commented that the additional conditions will allow a fairly large home on a small lot. She thinks that there is a reason for requiring a 100 ft. lot width in West Beverly Hills for new construction, and she supports enforcement of the ordinance to maintain the spaciousness of the area. Janiga thinks that approving this variance will set a precedent for lowering standards for new construction.

Board members responded that each case heard by the ZBA stands alone and cases are not precedent setting. Schafer remarked that there are historical circumstances involved in this property that are not evident in other property in the immediate vicinity. The additional

conditions were included to do substantial justice to the neighbors in the district and specifically the adjoining property owners.

Kathleen Berwick of 31381 Kennoway stated that she is opposed to granting the variances on the basis that this small lot will not be in keeping with the look of the neighborhood.

Leonard Janiga of 18910 Warwick maintained that the proposed motion allows the Christies to build a “big foot” home of up to 2,700 square feet and have an attached garage. He finds that unacceptable.

John Kemp of 21200 Smallwood commented that he came before this Board for a variance two years ago. Many of the same arguments were voiced about the home he was proposing to build. Kemp related that he and his wife appeared before the Village last month to receive a beautification award for their home.

Dan Cahill of 18614 Warwick commented that he believes the plan proposed by the Christies is good for the neighborhood, and he fully supports it.

George Cahill of 19145 Devonshire stated that he was before the ZBA a few years ago for a variance in connection with renovating his home. He concurs that there are unique circumstances associated with the Christie property given the age of the house and the undeveloped lot that has been there for a long time. Cahill fully supports the plan with the proposed modifications and thinks the new home will compliment the neighborhood.

Board members discussed the motion. Oen commented that the permitted house size will leave about 10,000 SF on the lot, which is not a “big foot” type of construction.

Stearn commented that he has viewed the property in question and considered the setbacks that would be required for this zone district. He continues to question whether one of the standards for establishing practical difficulty is being met in terms of the proposed variance doing substantial justice to other property owners in the district. Stearn thinks that a greater restriction on maximum building size would give substantial relief to the Christies and be fair to the neighbors.

Berndt responded that the numbers in the motion are based on allowing a structure to be built that is competitive in today’s market for the surrounding area. He brought up the issue of whether the difficulty amounts to an unnecessary hardship. There is 212 ft. of frontage on the lot. If the petitioners are forced to move the house over, they can build a large house on the remaining parcel. The motion will restrict the size of the house and require a certain amount of green space on the lot. The motion is a compromise looking at the issue of unnecessary hardship.

Roll Call Vote:

Berndt	- yes
Fahlen	- yes
Napier	- yes
Needham	- no

Oen - yes  
Schafer - yes  
Stearn - no  
Verdi-Hus - yes

Motion passed (6 – 2).

**ZONING BOARD COMMENTS**

Berndt asked if the members have reviewed the handbook he has drafted outlining standards to be met in granting a variance by the Zoning Board of Appeals. Copies were distributed to Board members who did not receive the document.

Board members discussed the Mayfair case in terms of restrictions on building size and members' perception of substantial justice.

Schafer informed the Board that he has received a letter from Roger Meyers representing Tim and Monica Mercer (Case No. 1135). The Mercers would like their case to be rescheduled for consideration on the next available Zoning Board of Appeals agenda. Their rationale is that no decision was made at the September 13, 2004 meeting because the motion did not receive five affirmative votes. Schafer will send a copy of the letter and the September ZBA meeting minutes to Village Attorney Ryan for his opinion on this issue.

Needham 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 questioned whether these standards are to be considered permanent criteria that will apply to all decisions made by the Board.

Schafer responded that these criteria apply to practical difficulty cases. He expressed the view that this is not a perfect standard for the reason that there is slightly different language in the Village ordinance and there are other case law examples.

Motion by Berndt, second by Napier, to adjourn the meeting at 8:14 p.m.

Motion passed.

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

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

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