

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

Absent: Brady and Verdi-Hus

Also Present: Building Official, Byrwa  
Council Liaison, Taylor

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.

Zoning Board members conducted an on site visit at 31831 Vallen Court at 7:00 p.m. to view the fence in question with respect to Case No. 1151.

### **APPROVE MINUTES**

Schafer proposed the following changes to the August 8, 2005 Zoning Board of Appeals meeting minutes:

Page 2, paragraph 2, line 1, add 'claimed' before the word 'hardship'.

Page 3, line 4 of the motion, replace 'granted on' with 'subject to'.

Page 4, after 'Section 22.08.150.A.1.', replace 'Permit' with 'regarding permits'.

Page 5, line 1, add 'She believes that the' to 'The fence is not a nuisance...'

Page 5, paragraph 3, line 1, replace 'concurs' with 'provides'; line 3, replace 'permitted' with 'allowed'; line 6, add 'it' after 'as'.

Motion by Oen, second by Napier, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, August 8, 2005 be approved as amended.

Motion passed.

Before proceeding with the agenda, Schafer made it known that he has reviewed the information provided to this body relative to Case No. 1154 and does not feel that the case is ripe for adjudication before the Zoning Board tonight. The petitioner requests a deviation to waive the private road requirements to provide access to a proposed southern buildable lot at 20605 W. 14 Mile Road. Schafer does not believe that there is anything for the ZBA to consider while there is one legal parcel. He maintains that a lot split application should go before the Planning Board and the Village Council, after which point it would be appropriate to come before the Zoning Board for a variance request for the private road requirement.

Schafer stated that there is support for his position in Ordinance Sections 23.15 and 23.16, indicating that the Planning Board has a right to vary rules if they deem a hardship is applicable. In addition, Section 23.16 d.3.(d) indicates, where a land division is approved that does not satisfy the Zoning Ordinance requirements, the applicant must file an affidavit with the Village stating that it is understood that the resultant parcels may not be used for building purposes unless they satisfy the requirements of the Zoning Ordinance. Schafer thinks that it is

required in this instance that the Planning Board hear the case before the Zoning Board of Appeals.

Brian O’Keefe, counsel representing the petitioner Charles Whitelaw in Case 1154, asked for clarification of the process recommended by the Zoning Board of Appeals. He noted that Village legal counsel Tom Ryan advised the applicant to take this route. Schafer has suggested that the applicant request a lot split from the Planning Board before the Zoning Board of Appeals can recognize a potential variance for the subdivided south lot. At the advice of the Zoning Board, O’Keefe indicated that they will look into the process further.

Schafer remarked that, at some point, the petitioner will come before all three bodies – Council, Planning Board and Zoning Board of Appeals – to obtain the approvals and variances necessary to proceed with the proposal. He expressed the view that the Planning Board is empowered to act on this matter before the Zoning Board of Appeals. Schafer will discuss this case with Village legal counsel.

Building Official Byrwa commented that he has talked to Tom Ryan about the issues involved in this case. The applicant must obtain a variance from the private road requirements in order to gain access to the property and render it a buildable lot. A ZBA motion would be contingent upon obtaining approval from the Planning Board and Council relative to a lot split and variance from the required average lot size.

O’Keefe asked that Case No. 1154 be tabled in order to make further inquiries.

**CASE NO. 1151 (rehearing)**

**Petitioner & Property:** Kelly F. Poniers  
31831 Vallen Court  
Lot 133 of Berkshire Valleys #4  
TH24-03-327-013

**Petition:** Petitioner requests an interpretation of the Ordinance and/or to retain the 6’ solid fence that was replaced by 25% each year since 1999 around the back yard.

Schafer reviewed that this case was discussed at the August Zoning Board of Appeals meeting with respect to ordinance interpretation issues. It was suggested that the petitioner may want to be represented by her counsel and that the Zoning Board may want to seek an opinion from Village Attorney Ryan regarding interpretation of the ordinance. Schafer stated that the petitioner is asking for an interpretation of the ordinance that would allow this fence to be construed as a conforming structure. In the event that the Board’s interpretation of the ordinance is not favorable, it will hear a request for a variance to retain the 6’ solid privacy fence located on the property line.

The applicant Kelly Poniers was present along with legal counsel Christopher Herter. Herter recapped that the fence was pre-existing when Ms. Poniers purchased the home. She

commenced improvements on the fence in 1998 in sections due to its wear and damage. The applicant has been working with the Village Building Official to resolve the matter. Mr. Byrwa has questioned the consistency of the building materials of the fence and the invoices submitted by the petitioner.

Herter stated that the contractors who performed the work are present tonight to address questions from the Board along with Ms. Poniers' ex-husband, who was living in the home at the time the repairs were being made. Neighbors who saw the construction occurring in sections are present to confirm that activity. These individuals will answer any questions from the ZBA.

Stearn remarked that the first issue to be addressed is whether the Zoning Ordinance allows a homeowner to replace 25% of a fence without a permit. The next issue is whether each of the sections was built over a four-year period.

Herter responded that it is his opinion that the ordinance does allow Poniers to replace 25% of her fence without a permit. The ordinance states that a permit need not be obtained if 25% or less of any fence is repaired in any given year.

Stearn believes that Tom Ryan's memo to the Zoning Board on this topic indicates that, historically, the ordinance has been interpreted to allow 25% of a fence to be rebuilt at any given time. He suggested that the Board discuss any alternative interpretations of the ordinance.

Berndt commented that the ordinance states that "No fence, wall or privacy screen shall be erected, replaced or altered by more than 25% of the vertical area of any side until a permit has been issued". The words 'vertical area of any side' present an interesting issue. He believes that the petitioner's argument indicates that she has exceeded the ordinance. He noted that the ordinance section is somewhat vague, and the Zoning Board is allowed a certain amount of discretionary authority.

Because the ordinance is vague with respect to this case, Stearn suggested that the Zoning Board consider making an exception and granting the petition. He would not be opposed to a motion that states that the ZBA will interpret this ordinance section in a certain way in the future.

Needham commented that he is inclined to support the petition due to the ambiguity of the ordinance and the fact that the replacement fence is less offensive to the standards of the community than the original fence.

Oen referred to ordinance language that states, "Should a structure be destroyed by any means to an extent of more than 60% of its replacement costs, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this ordinance." The intent of this wording may be to prevent this situation.

Herter urged the Zoning Board to act in favor of the petitioner. He believes that it would be beneficial if everyone in the community would be put on notice in the future as to exactly how the ZBA is going to interpret this ordinance.

Julie Flynn of 31745 Topper Court, neighbor directly behind Ms. Poniers, expressed the view that the replacement fence enhances the property. Flynn said that she has lived in her home for 15 years and has watched the fence being erected in stages. She is the neighbor most affected by the fence and is happy with the way it looks.

**Decision:** Motion by Stearn, second by Fahlen, to interpret the ordinance, for this petition only, such that 25% of any fence, wall or privacy screen can be rebuilt in the course of a year.

Roll Call Vote:

Napier	- yes
Needham	- yes
Oen	- yes
Schafer	- no
Stearn	- yes
Berndt	- no
Fahlen	- no

Motion fails (4 – 3).

Herter requested that the Board consider granting a variance to allow Ms. Poniers to retain the 6 ft. solid fence on the lot line. Schafer remarked that the Zoning Board has not resolved the ordinance interpretation issue at this point. In light of the discussion, Herter requested that Case 1151 be tabled until the ordinance interpretation can be worked out by the Board, which would clarify the issues and give the applicant more time to prepare a request for variance.

**CASE NO. 1153**

**Petitioner and Property:** Richard Marsh  
32344 Mayfair  
Part of Lots 2348 & 2350  
TH24-02-180-008

**Petition:** Petitioner requests a side yard deviation from the required 15' minimum side yard open space to 6' for a rear addition in order to continue with the existing line of the house.

Byrwa displayed photographs of the property and described the variance requested. The petitioner is requesting to extend the existing 6' side yard setback 28' further into the rear yard in order to construct a family room addition to their one-story home. The rear yard setback will be in excess of 64'. The house is positioned towards the north side of the lot, with a 40'

setback on one side and 6' on the other side. The house was built in 1950 with the garage added on later.

Berndt asked if it is anticipated that there will be a structure built on the adjacent lot and how close it would be to the proposed addition. Byrwa responded that the property has been sold, and he has reviewed a preliminary site plan with the architect. The new property owner will be submitting construction documents shortly. He understands that the new house built on the vacant lot will be 15' from the shared lot line.

Petitioner Richard Marsh is proposing to construct a family room on the back of his house. Moving the addition further to the south would close off the dining room window to the back yard. Building the addition on the south side of the house would result in having to walk through the bedrooms to reach the family room.

Marsh emphasized that they are requesting to continue the non-conforming setback and not increase it. The total building size with the 660' addition will be about 2800 sq. ft., which is 12% of the lot. The house will be comparable in size to the house that will be built on the adjacent lot. Marsh related that the garage was existing when he purchased the house 20 years ago.

Joanne Smith of 18604 Devonshire stated that she and her husband have purchased the lot just north of the Marsh home and are not in support of a proposal to extend the structure so close to the property line. They are planning to build a house that conforms with the zoning ordinance. Smith thinks that a structure this close to their home will interfere with the aesthetics of the house. If the variance is approved, she requested that the ZBA add a stipulation as to the quality of materials and amount of light that can pass through the structure.

Leonard Janiga of 18910 Warwick asked that the Board approve the request for variance as it has approved other similar variances for additions that would continue the existing line of the house.

Nancy Marsh stated that the Smith home and their home with the addition will be approximately the same depth. The Building Official has indicated that there are many houses in the Village where the side yard setback does not meet minimum ordinance requirements. She emphasized that the addition will not encroach into the rear yard open space. The Marshes submitted a list of 13 neighbors who have been contacted and have no objections to their proposal and request for variance.

Schafer read portions of a letter from William and Lisa Christie of 32380 Mayfair Lane in opposition to the proposal on the basis that it would allow the non-conforming structure to continue an additional 28 feet. They do not believe that the petitioners have demonstrated an exceptional or undue hardship.

Board members discussed the request for variance. There was concern expressed that a garage was added onto the house creating a non-conforming side yard setback. It was indicated that

the Zoning Board needs to be cognizant of additions that create a non-conforming situation so that these non-conformities are not increased.

Berndt commented that the petitioner did not add the garage and thereby create this difficulty. He does not see a practical alternative on the site for the addition. The question is whether it is reasonable to add the proposed structure to this house in this community given today's standards. Berndt feels that a hardship has been demonstrated.

In response to an inquiry about locating the building permit for the garage, Byrwa stated that many of the Village's records dating back more than ten years have been purged.

**Decision:** Motion by Fahlen, second by Oen, to grant a variance to allow the continuation of a non-conforming 6' side setback that was permitted in 1955-60 due to the placement of the house and the garage on the lot.

Roll Call Vote:

Needham - yes  
Oen - yes  
Schafer - yes  
Stearn - no  
Berndt - yes  
Fahlen - yes  
Napier - yes

Motion passed (6 – 1).

**CASE NO. 1152**

**Petitioner and Property:** Anna and Jeff Hurley  
32891 Norchester  
Part of Lot 2516, all 2517  
Beverly Hills #6, TH24-02-226-008

**Petition:** Petitioner requests a rear yard deviation from the required minimum 40' rear yard open space to 33.4' and a side yard deviation from the minimum 15' open space to 5' for a rear addition in order to continue with the existing line of the house.

Byrwa displayed photographs of the property and described the variance requested. The petitioner is requesting to extend the existing 5' side yard setback to build a rear addition that will continue with the existing line of the house. They are also requesting a rear yard deviation from the required minimum 40' to 33.4'. The house was built in 1951.

The petitioner Jeff Hurley commented that there have been no renovations made to this house, which was purchased from the original owner. He submitted letters from each of the abutting neighbors indicating their support of the proposed addition.

Hurley explained that the proposal is to add 6' onto the kitchen and to build an addition that would include a master bedroom, bath, and laundry room. The purpose of the addition is to provide space for their growing family and thus remain in the community. It was mentioned that a handicapped member of their family may be moving in with them in the future. They prefer to build an addition onto their one-story home rather than build a second-story addition. Hurley displayed preliminary architectural drawings.

Board members discussed the request for variance. There were no objections to continuing the existing non-conforming side yard, but concern was expressed with the extent of the encroachment into the rear yard setback. It was suggested that all of the alternatives have not been explored in this case and that a lesser variance may be possible.

**Decision:** Motion by Fahlen, second by Needham, to allow both deviations as proposed on the basis that the 5' side yard was in existence prior to the adoption of the Village Ordinance and the rear yard variance is reasonable to make proper use of the property.

Board members discussed the motion.

Roll Call Vote:

Oen	- no
Schafer	- no
Stearn	- yes
Berndt	- no
Fahlen	- yes
Napier	- yes
Needham	- yes

Motion fails (4 – 3).

Another motion was entertained on this request for variance.

Motion by Berndt, second by Napier, to approve a variance only for the requested extension of the 5' building line of the house on the basis that the house was built prior to adoption of the Village Zoning Ordinance.

Schafer referenced letters received from the following residents who indicated no objections to the variance as requested.

Claudia Macumber	32873 Norchester
Nick Ustick	32876 Balmoral
John K. Shea	32915 Norchester

Roll Call Vote:

Motion passed (7 – 0).

Schafer informed the petitioner that he could request a permit from the Building Department for a construction plan that is not in violation of the rear yard setback or he could bring a significantly different request for variance back in front of the Zoning Board for consideration.

**ZONING BOARD COMMENTS**

Oen questioned whether the Zoning Board can include conditions in its motions that require an applicant to build an addition with materials that are similar to the existing structure or that would compliment the house. He thinks that Board should consider this in the future.

Schafer suggested that the Board could approve motions with conditions. Byrwa noted that the Village does not have an ordinance that regulates harmony between the existing home and an addition.

Schafer reminded people to vote in the Village election tomorrow.

Berndt suggested that the Board consider adopting the handbook he prepared outlining standards to be met in granting a variance by the Zoning Board of Appeals and begin handing it out to individuals seeking an application to come before the Board. This will be an agenda item for the next Zoning Board meeting.

**BUILDING OFFICIAL COMMENTS**

Byrwa suggested that he and the chairperson should discuss and coordinate Zoning Board agendas in advance of the meeting.

Motion by Fahlen, second by Oen, to adjourn the meeting at 9:00 p.m.

Motion passed.

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

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

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