

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

Absent: None

Also Present: Council Liaison, Walsh
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.

APPROVE MINUTES OF A REGULAR ZONING BOARD OF APPEALS MEETING HELD ON OCTOBER 11, 2005

The motion on page 8 was changed to read: “Motion by Stearn, second by Verdi-Hus, to allow the deviation requested by the petitioner to exceed the maximum one footcandle of lighting at the lot lines pursuant to **and in accordance with** the photometric plan (revised to correct the spelling of Kirkshire) for the reasons that it will assure security for the bank and potential customers **and** that the plan complies with Federal regulations.”

Motion by Berndt, second by Brady, that the minutes of a regular Zoning Board of Appeals meeting held on October 11, 2005 be approved as amended.

Motion passed (9 – 0).

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.

Schaefer reviewed that this case was initially brought before the Board at its August 8, 2005 meeting and tabled. The case was reheard at the September 12 meeting. A motion was made by Stearn at the September meeting 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. There were seven members present with a 4-3 vote in favor of the motion. Five votes are required to pass the motion. At that point the case was tabled.

Board members Schafer and Berndt had the opportunity to speak with Village attorney Ryan about the methodology for approaching this case. Ryan wrote a letter to the chair of the Zoning Board of Appeals dated October 31, 2005 indicating that, when Case No. 1151 comes before the Zoning Board again, the procedure to follow will be: 1) The Zoning Board will consider the interpretation aspect of this matter and the ordinance language in question; 2) If the Zoning Board feels that the interpretation rendered in this case finds that the ordinance does apply, then

it is up to the petitioner to prove to the Board that the version of the facts stated in the case are as indicates; 3) If the Zoning Board then finds that the burden of proof has been met, it will be incumbent upon the Board to determine whether or not the petitioner has qualified for a dimensional variance.

Christopher Herter, attorney present on behalf of the petitioner Kelly Poniers, made a presentation on the ordinance interpretation question. His review of the correspondence from Attorney Ryan suggests that, if the language is interpreted to mean 25% of any given side, we are talking about 6.25% of the whole per year. That interpretation seems to be unfair and in conflict with the non-conforming structure provision, which states, “should a structure be destroyed by any means to an extent of more than 60% of its replacement cost, it shall be reconstructed in conformity with the provisions of the ordinance”. This is commonly interpreted as 60% at any given time, not over a period of time. Herter asked for an interpretation that Ms. Poniers is in compliance with the ordinance and that the ordinance provides that a person may replace up to 25% of the whole of a non-conforming fence in a given year and not be in violation of the ordinance.

Oen commented that residents enjoy the open space environment of Beverly Hills. His interpretation of the ordinance would be that a person needs a permit to replace more than 25% of fencing along the rear lot line. He proposed that privacy screening can be achieved with landscaping.

Herter maintains that the problem is that the ordinance is open to several interpretations, and the Village will continue to have these issues until the ordinance is rewritten.

Berndt concurred that there are several interpretations with the most liberal interpretation being 25% of the total mass of the fence. Considering the documentation provided on the construction of the fence and observing the weathering of the wood, nails and foundation, he does not think that the burden of proof has been met in order to qualify for this exception under the law.

Stearn remarked that Building Official Byrwa has historically interpreted this ordinance to allow 25% of the whole fence to be replaced over a period of one year. The Zoning Board of Appeals is now being asked to re-interpret the ordinance. Because Byrwa has been applying the ordinance in the same way, Stearn does not think that the Board can penalize this petitioner. He has no problem with making it clear in the future to Village residents that the ordinance is referring to 25% of one side of a fence not to exceed 60% of the replacement cost of the fence.

Berndt agreed with Stearn in terms of interpretation if that is the way that the Building Official has interpreted the ordinance. However, he does not think that the burden of proof has been addressed. Berndt hopes that the Village Council will direct the Planning Board to review and tighten up this ordinance language.

Schafer disagreed with the approach but stated that he would bend to the will of the majority on the ordinance interpretation issue.

Needham commented that he has a problem with the fact that much of the conversation is hinged on “burden of proof”. He thought that the burden of proof should be on the accuser and not the petitioner.

Motion by Stearn, second by Needham, that the Zoning Board of Appeals apply the ordinance in the way that the Building Official has been interpreting it, such that 25% of the entire fence can be rebuilt by the petitioner in the course of a year without a permit in this case only, not to be used as a precedent and not to be applied in the future in this way for any petitioner who comes before the Board.

Members of the Board debated the motion and whether the Board can interpret the law in the context of one specific case. It was questioned whether the Board should offer a motion stating that the ordinance will be interpreted in a specific way in the future. Council has the option of amending the ordinance to clarify this particular language.

Roll Call Vote:

Berndt	- no
Brady	- yes
Fahlen	- no
Napier	- yes
Needham	- yes
Oen	- yes
Schafer	- no
Stearn	- yes
Verdi-Hus	- yes

Motion passed (6 – 3).

Motion by Stearn, second by Oen, that, in the future, the ordinance shall be interpreted so that no fence, wall or privacy screen shall be erected, replaced or altered by more than 25% of any one side of the fence until a permit has been issued.

Roll Call Vote:

Brady	- no
Fahlen	- yes
Napier	- yes
Needham	- yes
Oen	- yes
Schafer	- yes
Stearn	- yes
Verdi-Hus	- yes
Berndt	- abstain

Motion passed (7 yes - 1 no - 1 abstention).

Schafer stated that the Zoning Board will proceed with a determination of whether or not the petitioner did replace less than 25% of the fence in any twelve-month period.

Herter questioned whether a Board member can make a judgment based solely on the weathering of the fencing material or rusting of nails. The petitioner has provided the Board with sworn statements or affidavits from contractors who performed the work. Two of the three contractors

were present at a meeting ready to offer testimony. If it comes down to the question of credibility, the petitioner has people who are willing to offer testimony for the record.

Poiners made comments on her behalf citing her credibility and character, her professional credentials, and her memberships and affiliations in community organizations. Poiners maintains that she has complied with the Village ordinance and is trying to reserve her property rights.

Berndt commented that it was the purpose of those who drafted the fence ordinance to maintain the Village with open space. The intent was to prevent a fence like this from continuing to exist. This petitioner is claiming to qualify under an exception that says that the fence is allowed if only 25% of a fence is replaced in one year. It is the burden of the petitioner to demonstrate that she qualifies under the terms of that exception. In Berndt's mind, she has not.

Oen commented that, as a general contractor, he finds it difficult to believe that the fence was erected in four separate years.

Verdi-Hus said that she cannot prove beyond a reasonable doubt that the petitioner has not complied with the ordinance. Nor does she think that the petitioner can prove that she has complied. Verdi-Hus would vote to give the petitioner the benefit of the doubt.

Stearn remarked that we are all neighbors, and the ZBA is trying to make decisions in the best interest of the community. He is also willing to give this resident the benefit of the doubt when she has provided quite a bit of evidence in terms of invoices and sworn statements that she replaced one-quarter of the fence every year for four years.

Needham reiterated his belief that the burden of proof falls on the Village and that the Board is contesting evidence that is not required by the statute. He indicated that he wanted to distance himself from any aspect of writing the law.

Schafer disagreed with Needham's interpretation and contends that there is no way that the municipality or the Zoning Board intends to have all of these issues fall on the Village to prove. He questioned the credibility of the documentation.

Decision: Motion by Stearn, second by Oen. It has been established for purposes of this case that the petitioner did erect and/or replace 25% or less of the entire fence each year for four years.

Roll Call Vote:

Fahlen	- no
Napier	- yes
Needham	- yes
Oen	- no
Schafer	- no
Stearn	- yes
Verdi-Hus	- yes
Berndt	- no
Brady	- yes

Motion passed (5 – 4).

Schafer stated that Mr. Ryan's third point was that, if the ZBA finds that the burden of proof has been met, it is incumbent upon the Zoning Board to determine whether or not the petitioner has qualified for a dimensional variance in this case. Schafer thinks that this has been obviated by the action taken, which disposes of the case.

CASE NO. 1155

Petitioner and Property: Ann Lambrecht
32291 Verona Circle
Lots 428 & 429 of Beverly Hills #1
TH24-01-279-017

Petition: Petitioner requests a 6' high shadow box fence at the back lot line that is not open to air and light by 35%.

Oen asked to be recused from this case for the reason that the petitioner is a neighbor of his mother and a friend. Needham remarked that there have been petitioners who have been personal friends of his. He questioned whether recusal was appropriate when there was no direct financial interest in a case. Oen withdrew his request on the advice of the Board and indicated that he would be able to evaluate the case objectively.

Ann Lambrecht stated that she is seeking a variance from the fence ordinance and has submitted additional documentation including letters from her neighbors who are in support of her case. Lambrecht introduced Chuck Cairns of 16207 Wetherby who will assist in presenting her case to the Board.

Cairns commented that Ms. Lambrecht is requesting two variances to build a 6 foot high shadowbox fence that is opaque at the back lot line. The proposed fence will provide for ventilation. He explained that Lambrecht has made substantial improvements to her property over the last couple of years, particularly in the rear yard area. The rear wall of the house contains a substantial amount of glass windows and door walls to take advantage of the back yard.

Cairns outlined problems experienced with the neighbor abutting Lambrecht's lot to the rear. This neighbor has stored refuse and trash behind his garage to the extent that it began to interfere with Lambrecht's opportunity to enjoy her rear yard. She attempted to discuss the problem with the neighbor to no avail. After Lambrecht contacted the Village, a code enforcement officer contacted the neighbor and ultimately cited the individual with a fine. The neighbor's backyard area was cleaned up and remains so as of today. The neighbor also installed a bright light in the back of the garage, which shone onto Lambrecht's yard and into her house. This light has since been removed.

Lambrecht tried three times to plant evergreen trees along the property line as a screen. A professional landscaper planted 52 arborvitae along the rear property line, which did not survive. An attempt was made to live within the framework of the Village zoning ordinance as far as screening the property.

Lambrecht has concerns about the future considering the experience she has had with this neighbor. She believes that there is a hardship that would justify erecting an opaque fence high enough to screen the neighbor's property from view so that she may enjoy her rear yard.

Questions from the Board were addressed by the petitioner. Lambrecht indicated that the 6 foot fence height is necessary because her patio is elevated 10" off the ground. It was suggested that she could erect a privacy screen 10' from the property line to screen her patio.

Berndt cited Michigan case law which states that, in order for the ZBA to grant a dimensional variance, there must be practical difficulties that relate specifically to this unique piece of property in terms of topography, location, a major road abutting the property, etc. The hardship should be unique to the parcel but not to its usage by the resident. The comments heard relate to difficulties with a neighbor. These matters have been addressed by the Building Official and the code enforcement officer. To alter the law to give a person fortification against those who break it does not seem to be appropriate.

Lambrecht referred to a letter dated September 6, 2005 from a registered forester and arborist. It was the advice of the landscaper that plantings were not going to survive in that location.

Verdi-Hus suggested erecting a fence that meets ordinance requirements and supplement it with shrubbery or plantings. Berndt proposed planting ornamental trees that block the line of site between key windows and the neighbor's property.

Schafer stated that the arborist indicated in the letter submitted that part of the problem with the arborvitae was with planting the trees so close together due to a desire to have instant screening.

Letters were received from the following residents in support of the petitioner's request to erect the proposed fence:

James P. George	32280 Auburn
Stacy Runde	32286 Verona Circle
Carolyn Oen	32275 Verona Circle
Jon and Jennifer Harst	32292 Auburn

A letter from Donald Katz and Karen Markel of 32286 Auburn Drive, neighbors to the north, listed objections to the request to erect a fence that would not be in conformity with the Ordinance.

The issue of the fence interfering with a public utility easement was mentioned by Schafer. The Board has traditionally avoided granting variances in an easement area until it knows that it is not in violation of the terms of the easement. Lambrecht stated that she has addressed this issue with Byrwa, who indicated that it was not a problem. Cairns stated that they may be able to produce proof of this, but there is no easement in that location to his knowledge.

Decision: Motion by Stearn, second by Berndt, to allow a 6 foot high shadowbox fence at the back lot line that is not open to air and light by 35% for the reasons stated by the petitioner.

Roll Call Vote:
Motion failed (9 – 0).

CASE NO. 1156

Petitioner and Property: Terry Meter
32210 Beaconsfield
Part of Lot 2373, all 2374
Beverly Hills #5, TH24-02-252-009

Petition: Petitioner requests a side yard deviation from the required 15' minimum side yard open space to 7.7' for a second story addition over the existing attached garage.

This case was heard on October 11, 2005 and tabled at the request of the petitioners. Copies of the plans for the proposed addition have been submitted to Board members for their review. Jim Schneider, architect, was present with the homeowners Mr. and Mrs. Meter and their contractor Cal Watson. Schneider provided Board members with a letter and a diagram of a site plan that shows the actual buildable area of the parcel.

The petitioners are requesting a variance to allow the construction of a second story addition over an existing single story attached garage. The property is zoned R-1 residential and the proposed use is allowed. The home was built on an irregular shaped, non-conforming corner lot with an area of approximately 12,864 square feet. The home was built in the 1930s prior to the adoption of the Village Zoning Ordinance. The home is sited parallel with the Norchester Drive property line creating an irregular set back at the interior side yard.

As indicated by the hatched area of the site plan, the existing house cannot be expanded horizontally in a manner that provides any usable square footage. Schneider stated that it became evident while reviewing the alternatives that providing a second floor addition over the garage was the most practical solution. The proposed addition also improves the architecture of the existing house by de-emphasizing the garage door and providing a roof line that matches the house.

Schneider noted that the petitioners are not requesting a variance in excess of the existing non-conformity of the structure. The addition being proposed is 636 sq. ft. with only 65 sq. ft. located in the existing setback. The property owners enjoy their home and community and wish to remain in Beverly hills. They have growing children and require more space. Given the irregular shape and area of this specific piece of property and the original placement of the house on the lot, the petitioners believe that the strict application of the regulations will result in a peculiar and exceptional hardship.

Questions from Board members were addressed by Schneider and the petitioner. It was indicated that the garage was added onto the home by a former owner at some point.

The Zoning Board has received a letter from adjacent property owners Stephen and Dora Higbie of 32336 Beaconsfield indicating their support of the proposed addition. Higbie was present and

indicated that he believes that the garage addition was constructed in 1980. Higbie had no objections to the proposed addition and hoped that the Meter family will stay in the community.

Kathleen Berwick of 31381 Kennoway Court asked if this will be a “bigfoot” house when it is finished. Schafer responded that the footprint is not going to change given that the request is for a second story addition.

Schafer questioned why building in the buildable area towards the rear of the house would not provide the needed space. Schneider answered that the buildable area indicated on the site plan is located behind the garage. Also, there is a small one-story area off the back of the garage that will not be built over. Given the architecture of the house, this was the most reasonable way to add on to this home and improve upon what is there. It was mentioned that there is landscaping and a brick patio in the rear yard.

Berndt commented that this house was built on a small, irregularly shaped lot in an area that was originally developed with small side-yard setbacks and where the spacing from the side lot line would not have been in violation until the Village Zoning Ordinance was adopted. He agrees that there would be an aesthetic benefit to the community from the proposed alterations to the house. There is the issue of how much is too much building on a lot. The addition would be a home office and additional living space. Berndt stated that his main concern is the proximity of the structure next door and fire safety. He noted that it is not the fault of the petitioner that the neighbor’s home was built three feet from the lot line.

Stearn found it troubling that this case involved a prior variance being granted and an addition built onto the house. He was opposed to allowing this variance until he reviewed the four standards to be established by the ZBA to determine whether practical difficulties are sufficient to grant a variance. He thinks that the petition meets three of the standards:

- (1) That compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk or density would unreasonably prevent the petitioner from using his property for a permitted purpose or render conformity to such restrictions unnecessarily burdensome.
- (2) That the grant of the variance applied would do substantial justice to the petitioner as well as to other property owners in the district and that a lesser variance then applied for would not give substantial relief to the owner of the property involved and would not be more consistent with justice to the other property owners.
- (3) That the plight of the petitioner is due to the unique circumstance of the property.

The fourth standard is that the problem is not self-created by the petitioner. Stearn thought that this was questionable since the petitioner purchased the house with the addition attached.

Schafer stated that he has also been deliberating whether it mattered to him whether there was a previous variance granted or whether this was simply presented as a two-story addition. He questioned whether having a 2800 sq. ft. house on the lot is unreasonably preventing the homeowners from use of the property.

Mr. Schneider stated that he has researched past action of this Board. There were two cases in June of 2005 that were similar in that one was a second floor addition over an attached garage in the setback (#1148). He realizes the dilemma of the Zoning Board. However, if older communities are going to continue to survive and promote improvement in its housing stock, there should be some flexibility within the zoning ordinance for that reason. Who is to say whether a 2800 sq. ft. house is large enough or not. The Meters would like to remain in the community and continue to invest in their property. It appears that what we are proposing is consistent with what this Board has considered in the past.

Needham stated that the intrusion into the side yard was done by a prior owner. He views this proposal as a modest extension of an existing intrusion.

Decision: Motion by Needham, second by Fahlen, that the variance be granted in view of an exceptional practical difficulty of adding space in any other location and considering that the footprint is established.

Berndt stated that the issue of improvements to non-conforming property has been a topic of ongoing discussion by the Village Council and Planning Board. There was further consideration on whether the variance should be granted with comments from Board and audience members.

Roll Call Vote:

Needham	- yes
Oen	- yes
Schafer	- yes
Stearn	- no
Verdi-Hus	- yes
Berndt	- no
Brady	- yes
Fahlen	- yes
Napier	- yes

Motion passed (7 – 2).

CASE NO. 1159

Petitioner and Property: Michael DeRonne
19126 Devonshire
Lots 16, part 17 of Birmingham Woods
TH24-02-182-014

Petition: Petitioner requests a side yard deviation from the required 20' side yard open space to 10.6' for a side yard open space for a first floor addition behind the house and a second story addition above the garage in order to continue with the existing line of the house.

Schafer stated that this case was tabled at the petitioner's request at the October 11, 2005 Zoning Board of Appeals meeting.

The petitioner Michael DeRonne stated that he and his wife presented a request to the ZBA last month for a variance on both sides of the house. Following a discussion with Board members, they reevaluated the layout and have determined that they can meet their objectives without requesting a variance from the side yard setback on the east.

DeRonne stated that the proposal is to construct a second story addition over the garage and add onto the back of the house behind the garage and behind a portion of the home. The variance is needed to provide adequate room size for the addition over the garage and for the first story space. The lot is an 85' wide lot in an R-1 district where the lots are required to be 100 ft. wide. The addition will continue with the existing line of the house. The house was constructed in the mid 1950s.

Stearn asked what is to prevent the petitioner from coming back next year and requesting a variance on the east side of the property. He would support the variance if the motion included a prohibition from allowing a future variance on the east side of the property.

Schafer asked the petitioner to address whether the addition could be built further into the back yard without requesting a variance for the first floor addition. DeRonne stated there would be no practical way to access the second floor room and the appearance would not be architecturally appealing. The proposed layout works well to provide flow through the kitchen, family room and storage space.

Berndt asked if there is anything that prevents the petitioner from building behind the kitchen on the second floor. DeRonne responded that the hallway does not lend itself to reach the additional space with that configuration. The proposal is to add a bedroom to the second floor. The ground floor addition will provide a larger kitchen, a mud room and a family room.

Phyllis Dye of 19110 Devonshire expressed concern that existing drainage problems would increase with more concrete and building on the adjacent property. She was also concerned about further expansion to the second floor of the home. Dye commented that there are a number of homes on Devonshire that have less than 100 ft. wide lots.

George Kale of 19145 Devonshire, neighbor across the street, expressed support of the revised plan submitted by the petitioners and thinks it is within the parameters of the zoning ordinance.

Oen asked if the petitioner would accept a condition to the motion to construct the addition with reasonably similar materials to the existing house. DeRonne stated that they are planning to use brick and siding to match the original house materials.

Decision: Motion by Berndt, second by Verdi-Hus, that the variance be granted given that this is only an 11,075 sq. ft. lot in an R-1 District where 16,000 sq. ft. is required, and that the proposed modifications provide ample distance between structures for fire safety, and that the petitioner is seeking functions to the home which would be reasonably expected of a home in the R-1 portion of the community. Approval is subject to the condition that no future variance be sought for construction on the east side of the house, that the additions be of like materials to the existing structure, and that a limitation be placed on further building over the one-story portion of this property that encroaches into the side yard.

Needham questioned whether the Zoning Board is empowered to place conditions on granting of a variance. It was noted that a future Board could negate the actions of this Board.

Brady supported the variance but questioned whether the Zoning Board can direct a homeowner as to how to build their house or prohibit the property owner from returning to seek a variance on the east side of the house. Fahlen voiced his reservations to the conditions placed on the motion.

Berndt remarked that the City and Village Zoning Act allows the Board to impose the restrictions it deems necessary to protect the character of the community. With regard to prohibition of future expansion of a non-conformity, a future Zoning Board could set aside the action of this body. The intent of this Board will be on the record for consideration by future boards.

Fahlen would like the minutes to reflect that the building official should review the site plan for this addition to make sure that the drainage on this and surrounding property is not adversely affected.

Roll Call Vote:
Motion passed (9 – 0).

ZONING BOARD COMMENTS

Needham acknowledged two Council members in the audience and requested that Council consider revising Chapter 22.08.150(A) dealing with fence replacement as soon as possible. The Board welcomed new Council Liaison Gladys Walsh.

Schafer commented that consideration and possible adoption of the Zoning Board handbook was scheduled to be an agenda item for this meeting. He and Berndt had a meeting with Village Attorney Ryan and were asked to make some edits before distributing the handbook.

Motion by Fahlen, second by Berndt, to adjourn the meeting at 9:44 p.m.

Motion passed.

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary