

Present: Chairperson Jensen; Vice-Chair Landsman; Members: Borowski, Ostrowski, Tillman, Walter and Wayne

Absent: Freedman and Liberty

Also Present: Building Official, Byrwa
Planning Consultant, Borden
Council members, Pfeifer and Walsh

Chairperson Jensen called the meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

APPROVE AGENDA

MOTION by Ostrowski, second by Landsman, to approve the agenda as submitted.

Motion passed.

PUBLIC COMMENTS

None

APPROVE MINUTES OF A PLANNING BOARD MEETING HELD ON WEDNESDAY, MAY 24, 2006

MOTION by Wayne, second by Walter, that the minutes of a regular Planning Board meeting held on May 24, 2006 be approved as submitted.

Motion passed.

REVIEW INFORMATION FOR NEIGHBORHOOD STUDY

The Planning Board will be conducting a Neighborhood and Housing Study that has two components: 1) Review the east side of the Village in terms of non-conforming lots and the effect on redevelopment of homes; and 2) Consider changes to existing codes to limit the size of attached/detached garages and accessory structures on a lot.

Byrwa displayed a color-coded zoning map that identifies conforming and nonconforming lots in the Village. He pointed out a large number of R-2 zoned lots east of Southfield Road along with some R-3 and business zoned lots. Byrwa noted that over 70% of the lots on the east side of the Village do not conform with zoning district requirements in terms of lot size and lot width. The number of nonconforming lots would increase if minimum setback requirements were considered. This is not an issue on the west side of the Village. Byrwa also displayed a zoning chart that shows lot size and setback requirements for each zoning district.

Jensen asked the question, “why is this considered a problem?”

Byrwa responded that it is the opinion of some individuals that the nonconforming lot situation is restrictive when it comes to people expanding or modernizing their homes, and it creates obstacles to improvement of property.

Byrwa related that most of the houses on the east side of the Village were built in the early and mid-1950s. The Village incorporated in 1959 and adopted a Municipal Code that placed a majority of the homes east of Southfield in an existing non-conforming status. There were a number of homes built five feet from the lot line before the new zoning ordinance required future construction to be a minimum of 12.5' from the lot line.

Byrwa outlined the procedure followed when reviewing plans submitted by a homeowner who wants to build an addition or a garage on a non-conforming lot that does not meet setback requirements. The homeowner cannot increase an existing non-conformity in terms of a second floor addition or an addition off the rear of the house that continues the existing nonconforming line of the structure without receiving a variance from the Zoning Board of Appeals. The property owner must prove that there is a compelling reason why they cannot conform with the zoning ordinance requirements.

Jensen stated that residents who live on a conforming lot have an architect design an addition and apply for a building permit. The plans are reviewed by the building official, who has the authority to approve the plan as long as it meets setback requirements. Jensen commented that rules are established for building on a conforming lot whereas the procedures followed in a nonconforming lot situation are more subjective.

A resident living on a nonconforming lot cannot design or renovate their home without first going before the Zoning Board of Appeals, where they must demonstrate a hardship and some level of burden in order for their variance to be granted. Area residents are notified by mail of the case and may attend the meeting to express opposition or approval of the variance requested. The applicant is therefore subjected to popular opinion. Jensen stated that it is his opinion that it is an unfair and unreasonable situation as it exists.

Jensen stated that the Ordinance clearly discourages the expansion of any nonconformity. He maintains that the Zoning Board of Appeals works outside of the law for the reason that self-created hardships have never been a reason to grant variances. Jensen proposed that the Village needs to look at its ordinance in terms of why it states that the Village is not going to permit expansions of nonconformity yet it does. The ZBA appears to be functioning on the basis of what it considers reasonable without having a set of parameters.

Ron Berndt, member of the ZBA, responded that the Zoning Board does have a track record of being generous in terms of granting variances. Board members may be motivated by the desire to see the community improve and to help out its residents. Ultimately, the authority to determine how land is to be used is vested in the elected municipal body through adoption of ordinances. If some of the cases mentioned as examples were to be challenged in a court of law, Berndt maintains that the Zoning Board's generosity would be tossed out.

Berndt believes that the current Zoning Board is motivated by trying to do what is right and what is legal in addition to the desire to improve the community. Members of the ZBA are concerned about being caught between helping our community and a law that is doing the opposite.

Tim Mercer, newly appointed member of the ZBA, stated that he lives on a conforming lot and experienced similar issues with requesting a side setback variance because of the location of his house on the lot. He mentioned that the onus should be on the Zoning Board to give a reason for denying a variance.

Planning consultant Brian Borden suggested that there are a couple of ways to reduce the number of applications to the ZBA from property owners on the east side of the Village. One alternative would be to take a look at lot widths and lot area and consider amending the dimensional requirement standards for this particular area. He referred to the map created by Bob Bliven as a basis for this review. It may be appropriate to create one or two additional zoning districts with the goal of reducing nonconformities.

If a lower lot area designation is applied, the Village would want to be careful not to open the door for potential lot splits. In response to an inquiry, Borden stated that a way to handle big foot housing is to establish a usable floor area ratio to lot size. The averages of surrounding dwellings is taken into account. House size could be limited by using the lesser of two calculations, the percent ratio or an average of surrounding dwellings.

Borden stated that a measure applied in other communities to decrease the number of requests for variances is to loosen up restrictions on expansion to nonconforming residences. If a certain set of conditions are met, the Village might be able to administratively approve an expansion to a nonconforming lot where there is limited impact upon adjacent and surrounding properties as to either continuing the line of the house or building a modest addition. This would allow certain improvements and expansions where a set of standards were met and it was felt to be appropriate without having to go to the ZBA.

Jensen asked if Borden could be prepared next month to provide the Planning Board with various examples of how other communities are dealing with these issues. Borden remarked that he is currently working with Grosse Isle at ways to reduce the number of nonconforming conditions and ZBA applications from a particular neighborhood.

Gladys Walsh asked when the Planning Board will review statistics on the number of variances that were requested for property on the east side of the Village and the outcome of those cases over a certain period of time.

Jensen stated that the planning consultant was to be provided with a listing of all of the variances that were granted. A compact disk containing that information was prepared by Ron Berndt and will be given to Borden this evening.

Robert Walsh of 20655 Smallwood Court stated that he has statistics going back four years that show that there has been approximately one request for variance per month before the ZBA for either a side or rear yard setback in the entire Village. This is not a large outcry.

Berndt stated that the other side of that is plummeting property values, abandoned houses, and poor maintenance of property due to low property values.

Jensen stated that the Planning Board is attempting to flush out problems in an objective way. This will be a factual finding for the purpose of arriving at reasonable solutions.

Tim Mercer commented that Byrwa might receive phone calls from residents who are considering property improvements or considering purchase of a home in the Village but who may be discouraged by the process of going before the ZBA for a variance to build on their nonconforming lot.

Review and discuss information on attached and detached garages

Byrwa displayed photographs of a number of large garages in the Village. The first slide depicted the property on the corner of Virmar and Vernon, which brought the issue of oversized garages to the attention of the Planning Board and Council. This large lot south of 13 Mile Road includes two 2-car garages, a one-car garage, and another detached 720 SF garage. There is approximately 1500-1600 square feet of garage space on the property, and the homeowner submitted plans and was denied by the ZBA to add several hundred additional feet of garage space in the front yard. There have been adverse comments from neighbors regarding the garage space on that particular lot.

The question becomes how much garage space becomes too much before it has a negative impact on the neighborhood. Byrwa exhibited photographs of a number of outsized garages in the Village, primarily on large lots. He indicated whether the garages pictured meet all placement and setback requirements of the ordinance. The building department has not received complaints about most of the garages represented.

Byrwa commented that he has received information from the City of Troy regarding its current Accessory Structure Standards. Troy does not want a detached structure to have a larger footprint than the house.

Jensen asked if the Village has a problem that needs to be addressed. He expressed the view that most of the large garages pictured this evening were fairly discreet, and he does not find them objectionable. Byrwa remarked that there has not been a large public outcry about garage size.

Bob Walsh was of the opinion that the Village should look at the maximum square footage for the house. He suggested that you have to include an unattached garage as part of the house.

Jensen agreed that oversized garages can be a lot coverage issue. There should be a relationship between the garage and size of the house. Board members commented on deficiencies in the current ordinance. Borden stated that he is hearing that the Board would like to consider ordinance changes that would prevent future problems with outsized garages and accessory structures.

Borden reviewed a chart that presents sample language from other communities relative to accessory structure and garage regulations. Not many communities address the attached garage situation that well. As long as the minimum floor area is met for the residence in that particular

district and as long as setbacks are met, an attached garage can be as large as setbacks and lot coverage will allow. This could result in outsized garages in some areas of Beverly Hills.

Borden stated that the two most common approaches for accessory structure and garage regulations in addition to setback and lot coverage restrictions are ratio based whereby it is either a combination of the lot and the size of the house or just the size of the house itself. It could be a percentage of the ground floor area of the home.

Jensen remarked that this approach will not be effective on a two acre site unless there is a component that addresses the size of the garage in relationship to the size of the house.

Borden concurred that we do not want to see accessory floor area exceed principal use floor area. One approach is ratio based and the other approach is simply a maximum floor area. What the City of Troy has done is incorporated both, whichever is more restrictive.

Tim Mercer commented that it is not the job of the building official to help the Village contain overbuilding of garage space. His job should be code enforcement and review and approval of building permits. It appears that the Village needs to modify its ordinance language.

Pfeifer suggested that measures should be taken to forestall problems that Birmingham is having with living space built over a detached structure. Pfeifer expressed the view that open space is a critical issue in the Village and care should be taken not to create an excess of impermeable surfaces.

REVIEW AND DISCUSS INFORMATION ON NEW ZONING ENABLING ACT

Borden stated that State Legislation was passed that will combine all County, Township, City and Village Zoning Enabling Acts for better coordination and consistency. The Act will take effect on July 1, 2006. Borden provided the Board with a summary sheet outlining some of the changes resulting from the recently adopted Michigan Zoning Enabling Act (MZEA). The Village will want to consider possible amendments to its Zoning Ordinance to be in compliance with the new statute.

Byrwa remarked that the Village Attorney is looking into necessary ordinance amendments to bring the Village ordinance into sync with the new Zoning Enabling Act. The Village has implemented some of the changes in terms of mailings and advertisements. It was noted that the Village has one year in which to amend its ordinances; it must abide by the new statute starting July 1, 2006.

ELECTION OF CHAIR AND VICE-CHAIR

Elections are held annually for a chairperson and vice-chairperson of the Planning Board. Jensen opened the floor to nominations for the office of chairperson.

Wayne nominated David Jensen as chairperson of the Board. There were no further nominations. Jensen was re-elected as Board chairperson by acclamation.

Ostrowski nominated Elizabeth Landsman as Vice-chairperson. Walter nominated Ostrowski as Vice-chairperson. Landsman declined the nomination due to professional obligations. Ostrowski accepted the nomination and was elected as vice-chairperson by acclamation.

PLANNING BOARD COMMENTS

Ostrowski announced that the Beautification Committee is accepting nominations of residences and businesses in the Village to receive awards for their outstanding contribution in making Beverly Hills a more beautiful community.

PLANNING CONSULTANT’S COMMENTS

None

BUILDING OFFICIAL COMMENTS

Byrwa stated that, at its last meeting, the Village Council extended the terms of office to August 31, 2006 for Planning Board members whose terms will expire on June 30, 2006. Reappointments to Village Boards and Committees was a topic of discussion at the June 20 Council meeting. The Personnel Committee will meet and make a recommendation to Council on reappointments of Tillman, Ostrowski, and Liberty.

PUBLIC COMMENTS

Walsh related that Council took action on June 20 to authorize Draft #5 of the Master Plan to be disseminated to adjoining communities and Oakland County in accordance with the Municipal Planning Act. Byrwa outlined a few minor changes made to the document at that meeting. A bound edition of the Master Plan will be mailed to the communities.

Borden stated that he and Byrwa will coordinate responses that are returned to Beverly Hills. Any comments will be compiled and presented to the Planning Board and Council at the end of the review period. It will be determined at that time whether there are modifications to be made to the document. If not, the public hearing process will proceed. It was clarified that the Village is free to move forward once all of the comments are received.

Motion by Walter, second by Tillman, to adjourn the meeting at 9:22 p.m.

Motion passed.

David Jensen, Chair
Planning Board

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary