

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

Absent: None

Also Present: Village Building Official, Byrwa
Council Liaison, Walsh

Chairperson Schafer presided and called the meeting to order at 7:32 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 MONDAY, MAY 8, 2006

Motion by Oen, second by Berndt, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, May 8, 2006 be approved as submitted.

Motion passed (8 – 0).

CASE NO. 1163 (rehearing)

Petitioner and Property: Ron and Marcy Grant
16313 Birwood
Lot 3, Williamsburg Row
TH24-01-203-012

Petition: Petitioner requests a deviation from the minimum 5' side yard open space to 3' for a detached garage.

Byrwa stated that the 15 houses on Birwood just east of Pierce were built in 1976. The Grants came before the ZBA more than a year ago and were granted a variance to build an addition on the rear of their home. That construction has been completed. The petitioner is asking to build a detached garage in the rear yard and maintain a side yard clearance of 3' in deviation of the required five feet. This lot has two easements in the rear yard, a 10' and a 6' easement.

Byrwa displayed photographs of the house and property indicating where the garage is proposed to be constructed. The placement of the garage will not encroach on the 16' of easement in the rear yard. Byrwa noted that the neighbor's garage is built even further forward than the proposed garage.

Schafer stated that the initial request for variance to build a garage was heard by the ZBA on March 13, 2006. At that time, the petitioners proposed to build a 20' x 23.5' detached garage 1.5' from the west lot line. The revised petition is for a narrower garage that will be built 3' from the west lot line. Schafer questioned whether there was more detail available on the utility and drainage easements.

The petitioner Marcy Grant outlined the conversations they have had with their attorney, the Drain Commissioner's office, and neighbors regarding gaining rights to the easement on their

property, which would allow them to locate the garage further back on the lot. They were in the process of working with a notary to have a petition signed by their neighbors approving the use of the easement when they communicated with someone from the Drain Commissioner's office. That individual informed them that the Drain Commission has never modified a recorded drainage easement. It was suggested that the Grants contract to have a stake survey done, which was cost prohibitive. They decided at that time to reduce the size of the garage and move it further from the side lot line. Marcy Grant indicated that all of the neighbors support the proposed plan and have signed a petition to that effect.

Schafer outlined factors to be considered in order for the Zoning Board to change the law in the petitioner's favor. The applicant must demonstrate that enforcement of the ordinance creates practical or exceptional difficulties in connection with the dimensional variance, that the request is the least disruptive alternative, and that there is not a lesser variance that could be requested. The variance must be reasonable and appropriate relative to the rest of the community and not contrary to the public interest or compromise the public health, safety and general welfare. The situation must be unique to the property and the problem cannot be self-created by the petitioner.

Grant stated that the home addition might have led to the hardship, but it increased the value of their property and the neighborhood. She noted that there are other garages on the street that have been granted a 3' side yard variance. Their proposal conforms with the neighborhood.

Questions and comments from the Board were addressed by the petitioners. Board members were concerned with the lack of back yard space on the site. Stearn made the point that a homeowner can build a detached garage in Beverly Hills that can take up an entire back yard. Berndt noted that the lot width should be 75 feet in that zoning district. A site plan was approved many years ago that allowed a developer to build houses on 40' wide lots. The self-created hardship issue comes into play for the reason that the petitioner built an addition that constrains access to the garage.

Byrwa stated that side yard requirements in an R-2 zoning district are 17.5' and 12.5'. There were concessions made to build this Williamsburg Row development of 15 houses on 40' lots in 1976.

Schafer reviewed that the reason it was suggested at the previous hearing that the homeowner research gaining access to the easement was because there was a general feeling that the petitioners were going to have trouble demonstrating a hardship with the self-created nature of the case. If the homeowners were able to build on the 10' easement, the garage could be moved back to more easily provide access for two cars with no variance required. The Board implied that this would be a possible course of action. Board members appreciate and understand the efforts of the petitioners.

In response to an inquiry from Brady about the variance granted to build the addition, Berndt stated that he and Oen indicated at the time that the proposal for an addition should take the garage situation into account. Brady questioned whether the required setbacks should be applied to a 40' wide lot.

Oen concurred that this case involves a self-created hardship. He suggested that the garage be built 5' from the lot line on the basis that the homeowner is not going to get a second car into the garage whether it is 3' or 5' from the lot line.

Stearn stated that this case is a good example of why Village ordinances should preserve more green space in Beverly Hills. He will vote to approve this variance for the reason that the Board can preserve 17' of green space in the back yard or 15'. He is in favor of preserving as much green space as possible.

Kathleen Berwick of 31381 Kennoway Court expressed the view that an error was made when the Village allowed the development of the property in this fashion. She agreed with granting the variance and keeping more green space in the back yard.

Fahlen recalled that the land developed as Williamsburg Row was unkempt in 1976. The only way that the developer would agree to develop the area was with 40' lots. At that time, it was determined to be a better alternative than to have the land remain in an unsightly condition. Fahlen thinks that this is a reasonable request for a unique situation.

Decision: Motion by Fahlen, second by Brady, that the variance be granted on the basis that this is a reasonable request for variance on a unique situation on a unique lot.

Roll Call Vote:

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

Motion passed (5 – 3).

CASE NO. 1167

Petitioner and Property: Tom Buley
16260 Locherbie
Lot 754 of Beverly Hills #1
TH24-01-251-006

Petition: Petitioner requests a deviation from the minimum 5' side yard open space to 3' for a detached garage.

Byrwa stated that this house was built in 1957 and backs up to Our Lady Queen of Martyrs church. The petitioner is proposing to take down an old one and one-half car structure and

replace it with a larger detached garage further back on the lot. Byrwa displayed photographs of the property pointing out the garage to be removed and the area where it is proposed to build a new garage. The lot is 47' wide and 176' deep. Most of the neighbors' garages are set back on the lot.

Dawn Buley explained that they are proposing to construct a 2.5 car garage and place it back further from the home in order to provide space to drive two cars into the garage. There is a utility pole at the rear of the lot, which keeps them from locating the garage further back than what is currently proposed. The petitioners would like to maintain a 3' distance from the fence, which is the side yard dimension of the existing garage and comparable to other garages in the neighborhood. Buley stated that they want to retain as much yard space as possible due to the narrow width of the lot. The proposed garage is set back from the home for functionality. The location will allow for two vehicles to be parked in the garage conveniently.

Schafer reiterated the standards that the Board needs to consider. He questioned the issue with the land that prevents the homeowner from complying with the 5' side yard setback.

Buley stated that building the garage 5' from the lot line would result in a smaller back yard and more difficulty driving two cars into the garage.

Oen observed that there is 38' from the rear of the house to the proposed garage, which appears to be ample room for adequate turning radius to enter the garage if the structure is built 5' from the lot line.

Stearn suggested that requiring the homeowner to build the garage 5' from the lot line would eliminate two feet of their backyard area. He supported keeping the new garage at the same distance from the lot line as the existing garage. Stearn expressed the view that the Planning Board or Council should be addressing the issue of non-conforming lots.

Berndt did not think there was a big difference between a 5' or 3' side yard. He noted that one of the criteria the Board considers is the least amount of variance necessary to do justice to the petitioner.

Council member Walsh agreed that there has been no hardship established and no uniqueness about this case.

Buley stated that she has signed documentation that all of the neighbors are in agreement with the variance requested.

Decision: Motion by Stearn, second by Brady, to approve the petition based on the fact that enforcement of the ordinance creates peculiar or exceptional practical difficulties because of the width of the lot and the current placement of the existing garage located only 3' from the side lot line.

Roll Call Vote:

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

Motion failed (4 – 4).

Motion by Berndt, second by Needham, that the request for variance be denied based on the failure of the petitioner to demonstrate sufficient legal grounds for issuance of a variance.

Roll Call Vote:

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

Motion passed (4 – 4).

ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

Fahlen nominated Todd Schafer for the office of Chairperson of the Zoning Board of Appeals. There were no further nominations. Todd Schafer was elected by acclamation.

Schafer nominated Ron Berndt to the office of Vice-Chairperson of the Board. There were no further nominations. Ron Berndt was elected by acclamation.

ZONING BOARD COMMENTS

Byrwa responded to a question from Berndt about a blue tarp on the roof of a house on Georgina. Fahlen questioned whether the operation of an outdoor café in front of the Starbucks location at 13 Mile and Southfield Road requires an annual permit from the Zoning Board of Appeals. Byrwa will look into this.

BUILDING OFFICIAL COMMENTS

Byrwa informed the Board of a case pending for the July meeting regarding signage for Independence Bank at 14 Mile and Southfield Road.

Byrwa reported that he and Todd Schafer attended a seminar on the new Michigan Zoning Enabling Legislation that will take effect on July 1, 2006. There was discussion on how this legislation will impact the Village Zoning Ordinance.

Motion by Fahlen, second by Stearn, to adjourn the meeting at 8:45 p.m.

Motion passed (8 – 0).

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary