

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

Absent: Fahlen

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 MONDAY, SEPTEMBER 11, 2006**

Motion by Oen, second by Berndt, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, September 11, 2006 be approved as submitted.

Motion passed (7 – 0).

**CASE NO. 1173**

**Petitioner:** Scott Gittleman, Gittleman Construction

**Property:** 17324 Beechwood  
Part of lot 2159, 2160 of Beverly Hills #5  
TH24-01-156-014

**Petition:** Petitioner requests the following deviations: **1.** Side yard deviation from the required 5' open space to 3' to extend the existing non-conforming detached garage. **2.** Side yard deviation from required minimum 17.6' open space to 16.8' for an addition. **3.** Side yard deviation from required minimum of 12.5' open space to 10' for an addition in order to continue existing line of house.

Scott Gittleman of Gittleman Construction stated that the homeowners are proposing to renovate the house to add living space to accommodate their growing family. The three variances requested will extend the existing non-conformity of the house and garage. The intent is to build a family room onto the house without taking up more space in the back yard. A mud room is proposed to be added to living space off the driveway. The plan includes extending the garage forward to add storage space without exceeding the maximum garage size allowed. The existing garage is nonconforming with a 3' side yard setback in lieu of the 5' minimum required space. Gittleman stated that the plan also calls for an extension to the front porch.

In answer to an inquiry, Gittleman explained that they plan to locate the addition as requested in order to retain open space in the back yard and avoid building a bulky architectural element on the rear of the house. The intent is to design an addition that will blend in with the home. Building the addition closer to the garage would create a situation where there is a detached garage that is 10' from the house and little rear yard space. The practical difficulty is the fact that

the house is currently non-conforming in terms of side yard setbacks and lot width. In response to a question, the petitioner stated that he would be able to build an addition onto the back of the house without a variance, but it would change the style and effect the roofline.

Mercer informed the Board that he lives within 300' of this property and received a notice of this hearing. He stated that this will not impact his decision tonight.

Comments and questions from Board members were addressed by the petitioner. The homeowner indicated that the room at the rear of the house was an addition that existed when they bought the home.

Brady entered the meeting at 7:39 p.m.

The homeowner submitted five letters from neighbors in support of the proposed renovation plan. Letters from property owners at the following addresses indicate that they have reviewed the construction drawings of Traci Gerber and support the proposed renovations: 17331 Locherbie, 17311 Locherbie, 17319 Beechwood, 17340 Beechwood, and 17310 Beechwood, 17311 Beechwood.

Schafer noted the minimal nature of the additions and the fact that they continue the existing line of the house. The lot in question is smaller than surrounding lots. There is room to build into the rear yard, but it has been suggested that it is preferable from an architectural standpoint to construct the addition as proposed rather than adding mass to the back of the house and take up additional lot space. The proposed additions do not add to the mass of the structure from the front.

Stearn had questions and concerns about the garage addition and asked that the motion address the deviation requested for the garage separately.

**Decision:** Motion by Verdi-Hus, second by Needham, to grant the side yard deviation from the required 5' open space to 3' to extend the existing nonconforming detached garage forward as requested. The garage area will not exceed 720 sq. ft.

Roll Call Vote:

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

Motion passed (7 – 1).

Motion by Oen, second by Verdi-Hus, to approve the variances requested for the side yard setbacks on the east and west side of the house that will continue the existing line of the house.

Stearn commented that he becomes concerned when a house with an existing addition comes before the Zoning Board for another addition that will follow the line of the house. He believes that this is a topic that should be addressed by Council.

Brady remarked that the lot width is nonconforming. It was noted that the house was built in 1952.

Roll Call Vote:  
Motion passed (8 – 0).

**CASE NO. 1174**

**Petitioner:** Gary Foster of Hartman & Tyner  
24700 W. 12 Mile Road  
Southfield, MI

**Property:** 31065 Huntley Square  
Acreage, TH24-02-479-002

**Petition:** Petitioner requests a rear yard deviation from the minimum 35' to 19' for a proposed fitness center room addition.

Gary Foster representing Huntley Square Apartments requested a variance from the required 35' rear yard open space to 19' in order to construct a 16' x 39' fitness room addition onto the community building. The building abuts the Village of Beverly Hills municipal building parking lot. Foster remarked that the hardship involved is related to the fact that the Huntley Apartments are only 80% occupied and it is becoming more difficult to compete with apartments in surrounding communities that offer amenities such as workout facilities. The enhancement will render the apartment complex more marketable and attract higher quality residents while protecting the values of the community as a whole.

Foster stated that the owners could reduce the apartment credit restrictions and qualifying standards or they could add amenities to the apartment complex that would serve the public. He is asking for the Board's assistance in being competitive.

Schafer remarked that the Board cannot consider financial issues in its consideration of modifying the law in favor of the petitioner. There must be a reason to grant a variance that suggests that the structure cannot be situated on the parcel such that a variance is not necessary or that a lesser variance is not available on the site. Schafer noted that there is green space on the other side of the pool. The Board cannot evaluate where this fitness center might be located when it did not receive a plot plan of the entire apartment complex.

Foster stated that he submitted a plan with the application that highlights only the area in question although the entire development was reviewed extensively. He maintained that a free-standing building would more negatively impact the site and surrounding community than locating it behind the community center. It is proposed to work with the Village building department to construct an addition that would be architecturally pleasing.

Foster addressed questions from Board members on the projected use of the fitness room by their community, how many people can be accommodated in the area, the size and layout of the room, hours of operation, and foot traffic around the building. Foster indicated that many of the details of the fitness room would be worked out with the building department after a variance was granted.

Berndt commented that this development is part of a site plan approved by Council with the advice of the Planning Board. He questioned whether the ZBA can alter the site plan without Planning Board involvement.

Kelly Davis, Huntley Square site manager, stated that she spoke with Building Official Byrwa who advised them to appear before the Zoning Board of Appeals. It was determined that this is a unique situation because Huntley Square is both residential and commercial. Schafer commented that the Board can condition its motion on going before the Planning Board if necessary.

Berndt asked if consideration had been given to converting one or more units into a fitness center since the complex is 20% vacant. Foster did not think it was practical to ask people to share a common hall with the general population of the rest of the community and it would negatively impact surrounding neighbors. He questioned whether code restrictions for ingress and egress could be met.

Members questioned the analysis that went into choosing the size of the weight room and the location of the fitness center. Foster responded that the design and layout was based on what has been done at other sites and on what seems to work.

Berndt stated that he has a problem with taking a conforming situation and making it nonconforming. He would like Huntley Square to have this facility but does not hear a basis for granting a variance. Berndt would like to have more information in terms of the site plan in order to determine if there are alternatives to the proposal presented.

Shafer concurred that the Board needs a basis on which to grant a variance. Members have questioned whether the proposal has the least impact on the site and what other options have been considered.

Mercer commented that the Huntley Square apartment complex is a stepping stone into the community. He would like to look at the options and determine whether there is a way for the petitioner to provide this facility without creating a nonconforming situation. Stearn would like to look at a site plan that shows parking spaces and receive more data on the thinking that went into the size of the facility.

Foster requested that the appeal case be tabled until the next meeting at which time he will resubmit his proposal and provide Board members with a complete site plan.

Gregory Bader of 31139 Belmont commented that he lives in the first court beyond the complex. He asked that the Board consider in its deliberations the bus traffic in front of the apartments, competing traffic generated from the courts and apartment complex, and cars parked in front of the main driveway. Bader mentioned that there is open space around some of the other buildings.

Dorothy Pfeifer, Council member, recommended that the Zoning Board establish whether or not the Planning Board should be involved in a site plan review because of the impact of the proposal on the residences and apartments in the complex. Schafer stated that, if necessary, the ZBA will condition its decision based on a site plan review.

Gladys Walsh, Council liaison to the Zoning Board, commented that she has been silenced at the ZBA meetings previously when it has been pointed out that Council people should not be commenting or influencing the Zoning Board members in any way.

Schafer stated that Mr. Berndt brought it to his attention that he should not have given Ms. Pfeifer the floor according to an Attorney General's opinion. Schafer quoted from the AG's opinion from 1981 (No. 5853) that it is improper for a city council person possessing appointment power over membership of the city's board of zoning appeals to address the ZBA regarding a petition before the Board. However, Schafer believes that Mrs. Pfeifer's comments were not directed toward the petition itself but the appropriate disposition of the case and what bodies need to hear the case.

Stearn recalls that the past tradition of this body has been to allow anybody in the audience to say whatever they want. Board members may have made comments about Council members' participation at the end of the meeting, but he does not believe that people have been silenced. Schafer countered that this has not been his experience. Berndt suggested that Council members use discretion because, ultimately, the risk is to the Village. In cases cited by the Attorney General, the actions of the affected boards were ruled void because of duress put on them by council members.

Walsh asked that the record reflect that she believes that she has been cut off with her comments whereas Mrs. Pfeifer was not and that there is preference being given as to whom from Council can speak.

**CASE NO. 1175**

**Property & Petitioner:** Adam Waechter  
20144 Wellesley Court  
Lot 5 of Wellesley Subdivision  
TH24-03-229-022

**Petition:** Petitioner requests a rear yard deviation from the minimum required 40' to 27' for a rear addition in order to continue with the existing line of the house.

The petitioner Adam Waechter requested a rear yard deviation in order to build a rear addition that would continue with the existing line of his house. He listed the hardships as the irregular shape of the lot, the location of the house on the property, and the location of the existing and proposed kitchen. Waechter stated that the kitchen and dining room addition is needed to accommodate their growing family so they can remain in the community.

Submitted with the petition were three letters from neighbors who have reviewed the plans and are not opposed to the construction project. The letters are from homeowners at 20166 Wellesley Court, 20159 Cobblestone Court, and 20147 Cobblestone.

Waechter related that the architect has indicated that this is the only area of the house where the kitchen can be located due to the location of the plumbing, heating and electrical areas. The other part of the house is on a slab.

Questions on the dimensions of the lot and the addition were addressed by the petitioner. Berndt stated that this is an unusual shaped lot, and the request is minimal. He added that this is a situation that our laws address poorly in terms of definition of the rear lot line.

**Decision:** Motion by Berndt, second by Verdi-Hus, to grant the variance as requested based on the peculiar nature of this property and the placement of the house on the lot.

Roll Call Vote:  
Motion passed (8 – 0).

#### CASE NO. 1176

**Petitioner & Property:** Ami Ram  
16191 Marguerite  
Lots 483 and 484 of Beverly Manor #1  
TH24-01-452-007

**Petition:** Petitioner requests a deviation from the minimum 12.5' side yard open space to 6.5' AND a front yard deviation from the average of 39.25' open space to 26' open space for an attached garage.

The petitioner Ami Ram stated that the house, built in 1949, is very small. He has been making improvements to the house, which he purchased five years ago. Ram would like to build a garage on the front of the structure to house his car and for storage purposes. There was a garage attached to the house originally, but it was converted to living space a number of years ago.

The petitioner was asked whether he has considered building a garage in the rear yard where there is ample space. Ram responded that he cannot make the turn into the yard due to the narrow space between the house and the side lot line. Ram displayed his building plans. There is 6.5' between the house and the side lot line. His is one of the narrower lots on the street.

Berndt asked if the petitioner has considered restoring the original garage and adding space to the back of the house. Ram stated that he has concerns about the foundation of the house. He thinks the proposed addition will be a major improvement to the house and the neighborhood. The size of the house is approximately 980 square feet.

Questions from Board members were addressed by the petitioner. Berndt disclosed that he is the president of the homeowner association for this area. The petitioner indicated that he has not brought his proposal before the architectural control person of the subdivision association for the reason that his architect was advised to request a variance first.

Stearn stated that he understands why the petitioner wants to build a garage, but he questioned whether it is possible to do this and keep the house and the neighborhood intact. He thinks that there may be homes in the Village that cannot be added to. This is a small house with a small sideyard setback.

It was noted that the decreased front yard setback will alter the sight line on the street.

Janita Gaulzetti of 16219 Elizabeth commented that she lives on a street south of the property in question and does not know the petitioner. She expressed her overall support of this petition on the basis that this particular section of Beverly Hills is unique in that there are small houses built on slabs located on large lots. She would encourage anyone who wants to stay in the community and improve or enlarge the homes in that area of Beverly Hills.

Berndt stated that we have to be careful that we improve the community while encouraging everyone in the Village to maintain their homes. Alternatives are often encouraged if the Board cannot grant the variance as proposed.

Verdi-Hus suggested that the petitioner consider constructing a car port if his petition is denied. He may be able to add onto the rear of the house to provide storage. Storage sheds are allowed in the back yard.

Schafer stated that the Village received a letter dated October 4, 2006 in opposition to granting this zoning variance from the side yard and front yard open space. The correspondence is signed by property owners at 16211 Marguerite, 16210 Marguerite, and 16176 Marguerite. The concerns noted in the letter are that granting a variance would set a precedent and that the aesthetics, curb appeal, and home values of the neighborhood would be negatively impacted.

Schafer recapped comments from Board members indicating that there may be houses in the Village that cannot be renovated in the fashion requested and that may be the most economically feasible alternative. This is a narrow lot on a curved street. Given the size of this lot and home, Schafer sympathized with the petitioner's request. However, he did not believe that this body has

a basis on which to grant the request for variance that does not effect the rest of the community in a disproportionate way. The Zoning Board of Appeals is being asked to change the law as it applies to the petitioner's property. The Board cannot ignore a physical alternative to make changes to the property because there is a financial hardship associated with that alternative. Financial constraints may be a small component of the Board's decision, but it is basically tasked with looking at the property itself and whether the variance requested is the least that would do justice to the petitioner and to the surrounding communities.

Ram related structural problems and aesthetic issues that may be encountered with an alternate proposal.

**Decision:** Motion by Berndt, second by Oen, that the variance be approved as requested based upon the existing nonconforming conditions and the position of the house on the lot.

Roll Call Vote:  
Motion fails (8 – 0).

#### **CASE NO. 1177**

**Petitioner and Property:** Dale Irvine  
32041 Verona Circle  
Part of lot 439, all 440 of Beverly Hills #1  
TH24-01-282-007

**Petition:** Petitioner requests a deviation from the required minimum 12.5' side yard open space to 6' for a mud room and an attached garage.

Board member Jon Oen recused himself from participating in Case No. 1177. The petitioner is his next door neighbor, and Oen may be doing some of the work on the proposed addition. There were no objections from Board members.

The petitioner Dale Irvine stated that his home was built in the early 1940s. The garage is in a state of disrepair and needs major work. He is proposing to add value to the home by replacing and enlarging the garage by extending the structure to the front line of the house. The addition would continue with the existing line of the garage, which is 6'-6.5' from the side lot line. Irvine is requesting to renovate the garage to create a double garage with storage area in the rear. He would be replacing what is there already and extending the structure forward to the front of the house.

Board members reviewed the information received with the proposal. Questions regarding the mortgage survey drawing and the drawing submitted on graph paper were addressed by Irvine. It appeared to the Board that the addition would come closer to the lot line at the front corner. Board members thought that there was a need for further clarification in terms of actual measurements.

Berndt moved that, provided that a minimum distance of 6' be maintained between the property line and the structure, a building permit be issued allowing the construction of this addition as proposed with the existing building lines being extended to their intersection point as shown. Basis for approval is the unusual shape of the lot and the angle of the house on the lot. Verdi-Hus seconded the motion.

Stearn asked why the garage could not be moved back rather than extended forward. The petitioner responded that the garage could probably be moved back, but it is their preference to extend it forward to allow them to enclose more of the adjacent breezeway and provide additional living space in that area.

Stearn commented that he is concerned with making an existing nonconforming lot more nonconforming. He would be more inclined to vote in favor of the motion if it included a restriction that the structure not extend any higher than the current height of the home. Stearn would be opposed to a two-story addition that would exceed the height of the house. Berndt agreed to amend his motion to include this contingency.

Schafer stated that the property owner would require a lesser variance, if any, if the garage were extended to the rear. He does not see any physical constraints to building a rear addition other than to maintain the existing roof line.

Brady remarked that he is not comfortable with the information received and the accuracy of the measurements. The Board needs to see architectural drawings that depict what the petitioner is proposing to do.

The petitioner stated that he had applied for this variance several years ago and it was granted. Irvine asked that his case be tabled in order to provide a more complete plan with dimensions for the Board's consideration. Berndt withdrew his motion.

Schafer noted that the next Zoning Board of Appeals meeting is scheduled for Monday, November 13. Any members of this Board who are elected to Council will not be sworn in as a Council member until November 14.

#### **REVIEW INTRODUCTION TO FILING A ZONING BOARD OF APPEALS CASE**

Board members have received the final draft of the Zoning Board of Appeals handbook and have had the opportunity to review the document. The handbook outlines standards to be met in order for the ZBA to grant a variance. It is proposed to distribute the handbook to individuals making application to come before the Board with a variance request. It was noted that Village Attorney Ryan has provided feedback on prior drafts of the handbook.

Motion by Berndt, second by Verdi-Hus, to adopt the Zoning Board of Appeals Handbook.

Roll Call Vote:  
Motion passed (8 – 0).

**ZONING BOARD COMMENTS**

Brady asked if the Board received a formal opinion from Village Attorney Tom Ryan on the issue of whether or not Council members can comment on a Zoning Board case. Berndt responded that Ryan suggested that he research cases supporting the ruling cited earlier. The chairperson has not received a formal memorandum from Ryan.

Motion by Oen, second by Stearn, to adjourn the meeting at 9:26 p.m.

Motion passed (8 – 0).

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

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

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