

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

Absent: Fahlen

Also Present: Council Liaison, Walsh
Council member, Koss

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 TUESDAY, OCTOBER 10, 2006

Motion by Oen, second by Mercer, that the minutes of a regular Zoning Board of Appeals meeting held on Tuesday, October 10, 2006 be approved as submitted.

Motion passed (8 – 0).

CASE 1178

Petitioner: Kevin Hart, Architect
700 E. Maple, Ste 101
Birmingham, MI

Property: 31220 Pierce
Lots 271-275, Beverly Manor #1
TH24-01-452-003

Petition: Petitioner requests a side yard deviation from the minimum 40' open space to 21.29' for a proposed addition.

Byrwa stated that this residence at the corner of Pierce and Elizabeth Roads was built in 1948. He displayed photographs of the property and indicated the location of the proposed addition, which is intended to increase the size of the existing garage. Byrwa pointed out the arch to Elizabeth Street.

The ordinance states that every corner lot in any residential zone district that has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zone district in which such building is located. The petitioner is requesting a side yard setback deviation from the minimum 40' to 21.29' in order to build an addition.

Architect Kevin Hart was present requesting a variance on behalf of the Ramseys. He explained that the intent of the addition is to bring the home up to a standard two-car garage configuration with as little impact as possible on the area. The plan is to convert an interior space and extend it approximately five feet south. Hart displayed drawings and pointed out a row of trees along the property line that screens the corner. The homeowners are proposing an austere addition with a

minimum width to allow for a standard 16' door across the two-car garage. The interior of the home will be reorganized to create a mud room and improve the furnace area. The idea is to have a very low impact on the existing house and neighborhood. Hart stated that approval was received from the neighborhood association.

Hart related that the practical difficulty in this case is that the home is an existing non-conforming structure. The side setback is currently 26.29' in lieu of the 40' required by the ordinance. The home currently has a one-car garage, which is not practical for family use. The house was built prior to the adoption of the Beverly Hills Zoning Ordinance. Hart believes that a detached structure would have a more negative impact on the house value and the neighborhood than the proposed configuration.

Ron Berndt mentioned that he is the president of the homeowners association in the area, but it will not have a bearing on his decision on this case. There were no objections from Board members.

Questions from Board members were addressed by the architect. The existing square footage of the house is 2,044; the proposed addition will be approximately 100 square feet including the existing garage.

In answer to an inquiry, Hart clarified that the addition will extend one foot further into the front yard, which will result in a 39' front setback in lieu of the required 40' setback. He stated that his original application to the Board included requests for two variances. The notice sent to property owners within a 300' radius of the petitioner included a site plan that depicts both variances, but does not describe the front yard variance in the text.

Byrwa related that it was on his advice that a front yard variance was not included. It was his understanding at the time that the one foot measurement indicated on the site plan was due to the overhang, which typically does not require a variance.

There was discussion on how to handle a second variance to allow the front baring wall at 39' from the front lot line. There was agreement that those residents who received notice of a hearing on Case No. 1178 had an opportunity to respond or attend the meeting if they had any concerns about the proposed addition. It was suggested that the variance will have minimal impact on the existing home and neighborhood.

Janita Gaulzetti of 16219 Elizabeth was present to learn about the proposed addition. She had no concerns about constructing an addition to enlarge the garage. Gaulzetti mentioned that garage space is used for storage because homes in the area do not have basements.

Berndt commented that the lot conforms to the ordinance by size, but the existing home is non-conforming on three sides. If it were not a corner lot, there would be no side setback issue. The addition appears to be of minimal impact on the property. The house has no basement for storage and utilities. Berndt maintains that a two-car garage is a reasonable expectation in today's world.

Mercer expressed the view that the overlying zoning does not make sense in terms of this property.

Needham proposed modifying the motion to include a one foot variance to the front yard setback without requiring the petitioner to return with a new variance request. Schafer stated that the Board does have the authority to approve the front yard variance. The nature of the request was described in the notice mailed to affected property owners.

In response to questions, Hart explained construction details that justified the need to build the structure as proposed to extend one foot to the west.

Decision: Motion by Stearn, second by Oen, to allow the variance for both the side yard and front yard as requested by the petitioner for the reason that this property creates an exceptional and undue hardship because of the fact that the house is already nonconforming on the south side and for the reason that it is a corner lot with no abutting neighbors.

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

CASE 1179

Petitioner/Property: Phillip and Loma Schmitt
18103 Riverside Drive
Lots pt 1983, all 1984, 1985
Beverly Hills #4 , TH24-02-280-047

Petition: Petitioners request permission to erect a 6' high privacy fence that will not be 10' from the property line and is more than 25% of the lot line portion of the rear yard.

Byrwa informed those present that Case 1179 will be postponed to a future meeting at the request of the petitioners.

CASE 1180

Petitioner: Michael J. Dul & Associates
212 Daines St., Birmingham

Property: 17166 Beechwood
Lots 2168-21270, Part 2171
Beverly Hills #5, TH24-01-180-014

Petition: Petitioner requests a deviation to extend the fence past the rear corner of the house to the front corner of the house.

Byrwa related that it came to his attention that the fence in question was erected without a permit. He spoke with the homeowner Kenneth Flaherty, who has put considerable resources

into restoring the home built in 1928 and who has obtained permits for previous work done in the home. Flaherty explained that failure to apply for a fence permit was an oversight on the part of the fence subcontractor.

Byrwa displayed photographs showing the property, house, and fence. The property encompasses three and a half lots. The fence was erected in the side yard from the front of the house to the west property line. The Zoning Ordinance states, in part, that a fence in a rear yard shall not exceed 48 inches in height above grade and shall not extend toward the front of the lot farther than the rear of the house.

Landscape Architect Michael Dul was present representing the Flahertys and requesting permission to retain the ornamental four-foot high fence in the front yard. The fence is an extension of the front face of the house running parallel to Beechwood to the western property line. Dul related that the Flahertys have owned this unique house for several years and have been doing extensive work on the building. After renovating the interior, the homeowners plan to improve the site as well. Dul's firm was contracted to prepare a master plan for the site to include a patio, expansive lawn area, and landscaped garden. The owners want to enclose their property to provide a safe play area for their young children.

Dul displayed multiple drawings of the site to depict the progression of the landscape plan from the original state to completion. The house is positioned on the easterly section of the property, and the detached garage takes up a large portion of the rear yard. The orientation of the existing structure makes it difficult to enclose the rear yard to provide usable space, privacy, and a secure area for children. The rear yard is located along the west of the house based on the floor plan of the home. Dul emphasized that the owner plans to landscape both sides of the fence with flowering shrubs, climbing vines, and perennials. These plants will eventually screen the fence from view.

Dul observed that there is a precedence for front yard fences in the neighborhood. Because of the uniqueness of this large property, the petitioners believe that it makes sense to have a fence in the proposed location.

Schafer remarked that the Board needs a basis for granting a variance that ties to the land itself as part of its consideration of the case.

Kenneth Flaherty, homeowner, apologized for the fact that a permit was not obtained for the fence. He and his wife have been restoring the home since 1998 and have pulled permits for all previous work. The property is unique and historical. The house is constructed on three and one-half lots. They have made a decision not to sell a portion of the large property but to create a green space for their family.

Flaherty believes that the fence ordinance does not take into account a property such as theirs with a very large side yard. They were presented with the challenge of how to use the space for their benefit and to keep their children safe within the property boundaries. The ornamental fence has been professionally installed and adds character to the community. It allows their family to use their property because there is no backyard space due to the location of the house on the lot.

The Flahertys maintain that this situation clearly demonstrates practical difficulty in terms of fence placement because of the location of the home on the far east side of the property.

Flaherty submitted a petition signed by 19 neighbors who are in support of retaining the fence where it is at 17166 Beechwood. He indicated that that local homeowner association has also indicated support of the fence. Flaherty stated that there are 19 properties within one mile of his house where fences exist in the front yard.

Board members discussed the variance request at length. Verdi-Hus stated that she was not convinced that there was a practical difficulty or undue hardship that would prevent this fence from being moved back to conform with the ordinance.

Flaherty responded that strict adherence to the ordinance would result in the fence going through the patio in the back yard. In addition, erecting the fence in a location that complies with the ordinance would rule out enjoyment of their large lot due to the placement of the house.

Stearn questioned whether the ZBA can require a petitioner to provide landscaping to screen the fence. Byrwa stated that a variance can be conditioned on adequately screening the fence. Stearn stated that he could approve the variance requested on the basis that the orientation of the house and the abutting lot create a peculiar situation. He understood, however, that Council adopted an ordinance that does not allow fences in the front yard. The intent is to encourage screening with greenery. For that reason, Stearn suggested that the Board consider conditioning the approval on requiring landscaping to screen the fence.

Berndt stated that there is an irony here in that the fence ordinance was passed to preserve openness and green space in the community. This is a case where someone is trying to preserve open space while the law does not allow the fence placement as proposed. Unfortunately, Berndt cannot find a way to allow this fence under current laws.

Byrwa remarked that front yard fences are allowed in the Village with constraints. A three foot high maximum fence can span the front lot line but can only return back 8' on each side. A front yard fence is designed to compliment landscaping and not necessarily to enclose the yard. Byrwa was not sure if there are restrictions on front yard fencing materials that would preclude the use of a metal fence.

Mercer described the current situation on this lot and questioned whether it is an unnecessary hardship case. It was reiterated that the house is located on the far east part of the lot, which makes it unfeasible to adhere to the ordinance.

Schafer read an email letter from Vicki DiLaura, who is in favor of the variance requested. A letter from Debbie and Steve Kent of 17870 Locherbie stated that they support the variance request from the Flahertys. They are encouraged by the continued improvements to the home, which will increase property values in the Village.

A letter was received from Steven Bechtolt, Vice-President of the East Beverly Homeowners Association, who indicated approval of the fence and asked the Board to grant the variance

requested. Schafer mentioned that the homeowner has submitted a petition signed by numerous property owners who indicated their support of the current fence location at 17166 Beechwood.

Kathryn Berwick of 31381 Kennoway Court expressed the view that Village laws should be upheld. She questioned if there is a fine issued when a resident violates the ordinance. Byrwa described the process involved with notifying and ticketing a property owner who is in violation of a code. The resident in this case was required to obtain a permit or comply with the ordinance.

Schafer explained the “coming to the nuisance” argument and stated that he will consider whether the variance deserves to be granted whether or not the fence is existing.

Steve Bechtolt of 17124 Beechwood stated that the Flahertys have the support of the East Beverly Homeowner Association. As a neighbor, Bechtolt appreciates everything the homeowners have done to improve the neighborhood. He asked the Board to consider granting the variance.

Charles Tittle of 17140 Beechwood expressed his support to retain the fence in its current location.

Bob Walsh of 20655 Smallwood Court disagreed with granting a variance to allow the fence to come across the side yard beyond the rear of the house on the basis that it destroys the intent of the fence ordinance. Walsh questioned the safety of the protruding spikes on the metal fence.

Berndt commented that his problem is with the issue of the law. He can see the unnecessary hardship argument that would allow the fence to be built in the current location but at a three foot height.

Schafer questioned whether shifting the fence back to enclose the brick terrace would provide a sufficient side yard for the homeowners and accomplish their goals. This would still require a variance. Flaherty stated that he will consider the alternatives.

Decision: Motion by Stearn, second by Oen, that the deviation requested to extend the fence past the rear corner of the house to the front corner of the house be granted for the reason that the house is positioned sideways on the property on two lots with a large back/side yard and with the provision that greenery be used to obscure the fence within 12 months of granting this variance.

Roll Call Vote:

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

Motion fails (4 – 4).

The petitioner was informed that a new request before the Board must include a significant change from the request that was heard by the ZBA this evening.

ZONING BOARD COMMENTS

Schafer congratulated Ron Berndt, Jon Oen and Todd Stearn on their election to Council. He has received letters of resignation from the ZBA from each of these individuals. Schafer mentioned that there will not be more than six members on the Zoning Board for the December meeting, a factor that should be conveyed to all applicants.

Schafer suggested that it may behoove the Zoning Board of Appeals to have an alternative member appointed by Council. There have been considerations in the past with a recusal or absences when it would be helpful to have another member available.

Mercer wished the new Council members luck in their efforts and hoped that they work to address some of the issues that are faced by the ZBA.

BUILDING OFFICIAL COMMENTS

Byrwa congratulated the Zoning Board members who were elected to serve on Council.

Motion by Oen, second by Brady, to adjourn the meeting at 9:18 p.m.

Motion passed (8 – 0).

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary