

Present: Chairperson Schafer; Vice-Chairperson Brady; Members: Fahlen, Farris, Francis, Mercer, Needham and Tillman

Absent: Verdi-Hus

Also Present: Building Official, Byrwa
Council member, Peddie
Council member, Oen

Chairperson Schafer presided and called the meeting to order at 7:33 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 APRIL 9, 2007

Motion by Mercer, second by Francis, that the minutes of a regular meeting of the Zoning Board of Appeals meeting held on April 9, 2007 be approved as submitted.

Motion passed.

CASE NO. 1187

Petitioner/Property: Scott Small
16173 Marguerite
Lots 480, 481, 482 of Beverly Manor #1
TH24-01-452-008

Petition: Petitioners request side yard deviation from current 12.5 ft. to 11 ft. to erect a two-car garage.

Byrwa stated that the house was built in 1948. The petitioner is requesting a side yard deviation from the required 12.5 ft. to 11 ft. in order to construct an addition that would enlarge the existing garage to accommodate two cars. The house is undergoing extensive remodeling. Byrwa displayed photographs of the house and property indicating where the addition would be located and pointing out the distance between the houses.

Homeowner Scott Small stated that he is doing extensive renovations on the house, which was in poor condition when he took control. He would like to have an average two-car garage attached to the house. The 23'-7" garage would provide enough space for two cars, bikes, trash cans, etc. He provided the Board with a plot plan, layout, and the proposed front elevation of the house. Small is adding a basement off the back of the house and a 24' x 28' great room. A laundry room will be added behind the garage addition. Small does not currently live in the house, but anticipates moving into the home in July.

Questions from Board members were addressed by the petitioner. The 11 ft. side yard deviation only extends back to the end of the existing structure. Small stated that there are numerous homes on the block with less side yard area than what he is proposing. He has talked to the neighbors about the renovations.

The petitioner was asked whether he could enlarge his garage without requiring a variance and whether his proposal was the least amount of variance to accommodate his need for a two-car garage.

Small responded that there is no practical way to relocate the living space behind the proposed garage to the back of the house. He added that there is living space behind the existing garage.

Byrwa related that the Planning Board has been conducting a neighborhood study on the east side of the Village and has proposed zoning changes for R-2 and R-3 property so that lot area and setback requirements match the existing neighborhood character. The intent is to reduce the amount of nonconformity in the easternmost section of the Village. The Planning Board has postponed a recommendation to Council until it takes a look at the impact of the proposed zoning changes on R-2 zoned property west of Southfield Road.

Byrwa displayed a schedule of regulations that indicates the current and proposed lot area, lot width, and side yard setbacks. The proposed zoning change would require 5' on one side and 10' on the other side in an R-2 district. The R-2 zoning district currently requires a minimum side yard setback of 12.5' on one side and 17.5' on the other side for construction of a new home. Byrwa explained that the standard that has been applied for building an addition onto an existing home is to require the minimum side yard setback of the zone district, which is 12.5' in the R-2 district. The opposite side would be the nonconforming side.

Board members questioned whether Byrwa's interpretation with respect to side yard setback requirements for new construction was the intent of the ordinance. Members indicated that they would consider the case before them based on the current side yard setback requirements and not proposed ordinance amendments.

Small was asked if he has considered building a detached garage in the rear yard. Bill Currier of 19670 Beverly Road commented that there would be room to build a detached garage in the back of the lot. He made reference to the expense of the remodeling project and maintained that it is more advantageous for people to walk into the house from the garage. Currier mentioned that a detached garage could be constructed within five feet of the property line. He expressed the view that adding another bay to the existing garage to make it a 2.5 car garage is a reasonable request.

Schafer pointed out the irregular shape of the lot and observed that there is variance in the size and shape of lots on Marguerite. He is receptive to the variance requested but would not want to see the entire area proposed for garage use being converted into living space and then have a detached garage constructed on the property. The variance is being requested for the purpose of building a two-car garage. Schafer stated that he would be disposed to granting a variance if the petitioner were willing to accept a condition that there would not be a detached garage constructed on the property. Small responded that he would agree with that condition.

There followed discussion of a possible scenario where a nonconforming lot becomes conforming due to zoning changes, but there is a condition placed on the property by the Zoning Board of Appeals. Schafer thought that the variance would become moot and the

condition would go away once the structure became conforming due to a zoning change. He clarified that his intent was to condition a motion on not allowing a structure housing vehicles on the site but not to prohibit a small shed in the back yard.

Byrwa questioned whether it was in the Board’s jurisdiction to prohibit future building on a lot as a condition of approval of a variance. Schafer responded that the Zoning Board of Appeals is empowered to place conditions on a motion to approve a variance. There was discussion on the process in place in the Village office for determining whether there are restrictions on a property.

In answer to a question, Small stated that the house is currently just over 2000 square feet; the renovations will result in a 2600 square foot home. Schafer expressed concern about the interpretation of the minimum side yard setbacks that would render this as a request for a 1.5 ft. variance request. He noted that the Zoning Enabling Act requires bylaws for operation of the Zoning Board of Appeals. When those bylaws are prepared, they should specify what the Board is empowered to do through the Village.

Tillman stated that the petitioner is doing a substantial renovation to the home before moving into the Village. The request is for a variance from the required 12.5’ to allow a 11’ side yard setback, which is a minimal variance. The petitioner has demonstrated the need for a two-car garage, which would enable their family to use their property for the purpose for which it was intended. Tillman thought that the threshold has been met for determining a hardship.

Decision: MOTION by Tillman, second by Mercer, to approve the variance as requested with the condition that no accessory building be erected in the rear yard given the fact that the addition is to be utilized as an attached two-car garage. A hardship has been demonstrated in that the current dwelling is not large enough to accommodate a two-car garage.

Schafer commented that he would be amenable to allowing a limited size accessory building on the property. Tillman suggested an amendment to add “with the exception of a 10’x 10’ shed”. Byrwa indicated that the building code sets a threshold of 10’ x 12’ for an accessory structure.

Roll Call Vote:

Tillman	- yes
Brady	- yes
Fahlen	- yes
Farris	- yes
Francis	- yes
Mercer	- no
Needham	- yes
Schafer	- yes

Motion passed (7 – 1).

CASE NO. 1188

Petitioner/Property: Ian Mailing
31770 Westlady
Lot 24 of Valley Woods
TH24-03-402-003

Petition: Petitioner requests a front yard deviation from the required average setback of 70.75 ft. to 36 ft. to allow construction of a new home.

Byrwa stated that the house in question was constructed in 1959. The petitioner is requesting to demolish the current house and construct a new home on the existing footprint. He is asking for a front yard setback variance in order to build a 3500 sq. ft. house with a three-car side entry garage and a walkout basement. The average setback of the houses within 200 feet of the home is 70.75 ft.; the petitioner is asking to maintain the 36 ft. front setback of the current home.

Byrwa displayed photographs of the split level home and the property pointing out the sharp drop in grade behind the house. There are several retaining walls constructed on the lot.

The petitioner Ian Mailing stated that he bought the property with the intent of developing it and living in the house. A variance is needed because of the hardship that the lot presents. It is an irregular shaped lot that is less deep than the surrounding lots. There is a massive dropoff in the back, which makes it impossible to build further into the rear yard. Access to the garage is a challenge considering the steep terrain. He has attempted to set the house back and keep the garage towards the front. He is trying to maintain the location of the existing garage and set the house back further than the current house.

Mailing stated that all of the lots on the street are irregularly shaped. The proposed house will conform with the spirit of the neighborhood. By keeping the new structure close to the same location, most of existing large trees can be saved. It is an irregular lot and the grade represents a hardship. There is a huge distance between homes. He does not see a deleterious impact on the neighborhood.

Mailing displayed a drawing that shows the topographic lines of the lot, which explains why the house cannot be built further back on the lot. Questions from Board Members were addressed by Mailing. It was noted that houses across the street are not set back as far as the houses on the petitioner's side of the street.

Mailing added that the existing house has an obsolete floor plan. An inspection report on the house indicates that air conditioning cannot be installed because the house has hot water heat; the house also has electrical and insulation problems. Tearing the house down is a more responsible option than fixing it up. The house and foundation will be removed. Much of the retaining walls are crumbling and will be taken down. Mailing intends to build a walk-out basement onto the house.

Robert Jackson of 31725 Eastlady, who lives downhill from the petitioner, was concerned that a change in the grade of the hill could result in increased water draining into his back yard. He would like to know what is going to happen to the hill. Byrwa stated that it is required that the petitioner submit a drainage and grading plan as part of the house construction to make certain that the building does not exacerbate drainage problems in the area. Mailing remarked that he would discuss Mr. Jackson's concerns and needs with him.

Mailing stated that the retaining walls are designed to keep the ground from eroding; they do not stop water from going down the slope. The lot has a 14 foot drop from the back of the house to back of the yard. He could have someone look at where the water goes when it reaches the lot line.

Bill Gold of 31850 Westlady commented that his measurement of the distance between the existing house and the street were different than those presented by the petitioner. Byrwa explained how that measurement is calculated. Gold mentioned that he would be amenable to the petitioner building a new house on the site.

Louis Muench of 31700 Westlady Drive, adjacent neighbor to the south, stated that he would support a new house being built on the lot in question.

Frank Worrell of 32123 Bellvine Trail asked if the driveway in front of the house will remain where it is. He noted that there is a large tree between the house and the driveway. Mailing responded that he cannot say that the driveway will remain exactly where it is. The current driveway is in disrepair and requires replacing. He is trying to preserve every tree he can on that property.

Kathleen Berwick of 31381 Kennoway asked why the owner cannot use fill dirt and build further back on the lot.

Chuck Harris of 31650 Westlady requested to see stakes marking the proposed front of the house before the house plan is approved. Mailing responded that approval of the variance could be subject to the house being built no closer to the road than the existing house.

Bob Walsh of 20655 Smallwood Court, current president of the Valley Woods Homeowner Association, commented that the topography of the homes in the area are all different. This is a unique area and this is a unique property because of the drop in the back yard. He is in favor of granting the variance because it will be an improvement to what is existing. Walsh stated that the fence on the south side must remain in the rear yard.

Schafer commented on the topography of the lot and physical condition of the property, which lends credibility to the petitioner's case. He would approve the variance request as long as it is conditioned on being no closer than the current structure to the property line. This parcel is the smallest of the five lots compared in terms of front yard setbacks; the lot in question is more similar to the lots across the street.

Decision: Motion by Fahlen, second by Needham, to grant the request for variance on the basis of the physical condition and layout of the property and the grade differential in the rear yard. Approval is conditioned on the variance being no greater than 36 ft. and the new house being no closer to the property line than the existing structure on the lot.

Questions from residents were addressed by the Board and Byrwa.

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

PUBLIC COMMENTS

None

ZONING BOARD COMMENTS

Mercer questioned the limitations placed on the petitioner in case No. 1187 by the motion approved by the Board. He understood the motion to be contingent on no accessory building being erected in the rear yard.

Byrwa stated that a property owner is allowed one detached accessory building per rear yard and that a shed would be an accessory building.

Tillman stated that she understood Byrwa to mean that a shed that was less than 10' x 12' was not considered an accessory building. Byrwa clarified that he was indicating that the size of an accessory building triggers different building requirements in terms of footings. The petitioner was limited to no accessory building, which means that they cannot erect a shed that is 10' x 12'.

Schafer concurred that the Board was under the wrong impression when it made a motion on Case No. 1187. He thought that the petitioner would be allowed to erect a small shed in the rear yard. Schafer questioned how the Board could reconsider and amend the motion to reflect the intent of the Board.

Board members expressed concern that the petitioner and area property owners should have the opportunity to be present if the motion is reconsidered. Schafer proposed that the Zoning Board direct an inquiry to Village Attorney Ryan on this matter. The issue is that the Board voted on something that was incorrect in terms of what members thought they were voting for.

Fahlen stated that he has a problem with placing a restriction on a motion because the Village is not able to enforce the ordinances that it has.

Fahlen observed that Market Fresh owners removed the newspaper boxes along the outside of their building following his comment at the April 9 meeting on their unsightly appearance. It has also cleaned up the look of the Starbucks outdoor seating area.

Schafer stated that six tables were placed outside in front of Starbucks in lieu of the motion to approve three tables. It was agreed that this is not an issue because the intent of the motion was to approve the same layout as the previous year. The new manager misspoke at the meeting.

BUILDING OFFICIAL COMMENTS

Byrwa referred to a letter dated May 10, 2007 from Village Attorney Ryan addressing the question of whether or not a person can abstain from voting on a matter before the Zoning Board of Appeals. Ryan provided his opinion on the appropriate procedure. He stated that, generally, a member is not compelled to vote on a matter when he or she has a personal or pecuniary interest that has been disclosed to the body. However, the abstention of the request to be excused from voting must be placed before the body itself and voted upon. A majority decision will bind the person from either abstaining from the vote or voting on the matter. There was discussion of the Board on the opinion rendered.

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.

Motion by Fahlen, second by Brady, to adjourn the meeting at 9:30 p.m.

Motion passed (8 – 0).

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary