

Present: Chairperson Schafer; Members: Fahlen, Farris, Francis, Mercer, Needham, Tillman and Verdi-Hus

Absent: Brady

Also Present: Council liaison, Peddie

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 JUNE 11, 2007

Motion by Tillman, second by Mercer, that the minutes of a regular meeting of the Zoning Board of Appeals meeting held on June 11, 2007 be approved as submitted.

Motion passed.

CASE NO. 1190

Petitioner/Property: Kelley Oresky
31065 Stafford
Lot 27, Berkshire Estates, TH24-03-352-019

Petition: Petitioner requests a front yard variance of 17.5 ft. in deviation of the average front yard setback of 65.97 ft.

Building Official Byrwa explained that the Zoning Ordinance states that the depth of any home addition cannot be less than the average depth of the front open space of residences within 200 feet of the subject property on the same side of the street. The petitioner is requesting a variance of 17.5 ft. from the average front yard setback of 65.97 feet. Byrwa displayed photographs of the property and existing home and pointed out the location and extent of the proposed addition.

Zaid Arabo, designer of the project, explained that there was an existing two-car garage on the north side of the home. Part of that space was converted into a walk-in closet; the remaining garage space will be used for lawn equipment. The proposed addition will provide a three-car garage and living space. The petitioner maintains that bringing the addition forward will not affect the character of the neighborhood. Arabo asserted that the addition cannot be placed further back due to the existing floor plan and interior flow of the house. He mentioned that there were unsuccessful attempts to arrive at a design that did not require a variance.

Homeowner, Kelley Oresky, explained that a closet was constructed in the existing garage space because there was no closet space in the master bedroom. She is requesting a three-car garage to accommodate garage space for herself, husband, and mother, who will be living in the home. She stated that the proposed addition flows well with the existing structure.

In response to an inquiry, Oresky indicated that the home was built in 1941 and that there have been previous additions to the house. She has lived in the home for almost two years. The size of the home is 3,267 sq. ft.; the proposed one-story addition is 2,000 sq. ft.

Board members reviewed the site plan and discussed aspects of the proposal including the existing nonconforming side yard, proposed foliage removal in the side yard, the design and flow of the interior, and opportunities for constructing an addition that would accommodate the homeowner without requiring a variance.

Schafer expressed the view that it would not be unfair to limit the homeowner to an addition that would conform to the law due to the significant size of the property and existing house. He has not heard a compelling case for granting a variance that would allow the structure to come 17 ft. forward into the average front open space.

Mercer concurred that there appears to be enough room on the property to accomplish what the homeowner wants to do within the building envelope. He questioned whether there is an undue hardship that would prevent this. Verdi-Hus questioned whether there was something less obtrusive than the 17 ft. variance that could be proposed.

Oresky responded that she is attempting to obtain needed garage space without removing a large tree. She answered questions regarding the layout of the house. The architect added that the proposed addition represents the best use of space and provides an architecturally sound design. He noted the distance between the adjacent homes.

Tillman stated that the Village wants to do everything within the law to facilitate the ability of residents to enhance the value of their homes. She mentioned that there are people in the community who have built an auxiliary structures in the rear yard to store lawn and household equipment.

In response to an inquiry from the petitioner, Byrwa remarked that the ordinance requirement for meeting the average front yard setback is intended to protect and maintain a consistent front open space in neighborhoods. Encroaching into the open space can affect the integrity of the neighborhood and property values.

Schafer commented that the proposed plan may be the best addition for the homeowner; however, the Zoning Board can only change the law under significant extenuating circumstances. The Board does not want to grant a variance if it is not necessary. Schafer indicated that he would be more receptive to a minimal variance for a two-car garage addition. The Board has presented alternatives and has suggested that this is not the least variance available on the property for a reasonable addition. There has to be a compelling case that indicates that there is nothing else that can be done on the property.

Byrwa stated that, if the case is tabled by the petitioner with the intent of presenting a revised plan, property owners within 300 feet will be re-notified and the case will be re-heard. Byrwa also thought that it would be acceptable for the Board to grant a lesser variance this evening without re-notification. Placing conditions on the approval was discussed.

Schafer stated that the Board received a letter from David and Joan Jenson of 31130 Stafford indicating that they do not find that the tests for determining necessary hardship are met in this case. The Jensens added that the Board could grant relief should their review determine that there are valid reasons for the variance requested.

Thomas Eley of 31091 Stafford, property immediately north of the subject lot, commented on the specifics of the case presented. He mentioned that the petitioner Kelley Oresky is not currently residing in the home, which remains unoccupied. Eley questioned whether the current two-car garage and proposed three-car garage would exceed any ordinance requirements. He urged the Board to deny the request for variance on the basis that a physical hardship or practical difficulty has not been demonstrated by the petitioner.

Judith O'Donnell of 31270 Stafford objected to the variance requested and would not support a lesser variance for the reasons that it does not comply with the ordinance and would set an unfavorable precedent.

Clive Catchpole of 30150 Stafford made remarks from the overall viewpoint of the neighborhood in terms of the average front yard setback. Because houses across the street from the petitioner have 100 ft. front setbacks, the overall character of the neighborhood might be altered by the variance requested. Catchpole commented on the amount of trees and brush on Lot 12 abutting the lot in question to the south. The addition would result in clearing that brush and opening the view from Lot 12 to the new addition. He also asked that consideration be given to the location and construction of the new driveway. Catchpole commented that there is little activity at the house and no attempt by the homeowner to contact the neighbors to discuss the proposed construction.

Rogier Durand of 31025 Stafford (Lot 12) expressed concern about the potential loss of foliage between his lot and the lot in question, which he believes will have a dramatic impact on the neighborhood. He was also concerned about the large size of the proposed structure. He does not want to give up his view along the front setback area.

Kelley Oresky commented that this discussion is about a request for variance to allow a three-car garage on the property. She took exception to what she viewed as personal attacks. Oresky stated that it is her goal to move into the house permanently.

There followed discussion among the Board members, applicant and architect regarding the option of tabling the request in order to reconsider the design of the addition and possibly submit a revised plan requiring a lesser variance. The Village would re-notify affected property owners of a new request for variance. Byrwa stated that a meeting cannot be scheduled for September based on notification requirements set forth in the new Zoning Enabling Act. The applicant agreed to table the case.

Decision: Motion by Fahlen, second by Needham, to postpone Case No. 1190 to the next Zoning Board of Appeals meeting to allow the petitioner and architect to consider the proposal and either resubmit a revised plan and request for variance or design an addition that complies with the Zoning Ordinance.

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

This case will be carried over to the next regularly scheduled ZBA meeting as presented if there are no revisions made to the proposal. Area residents will be re-notified of the hearing.

CASE NO. 1191

Petitioner/Property: Ascension of Christ Lutheran Church
16935 W. 14 Mile Road
Lots 40-49, 50-64, 636, 637, 003, 004, 011, 012 of Rex Humphrey's Eco
City Subdivision, TH24-01-127-013

Petition: The petitioner requests: 1) a variance to erect a playscape in the side yard;
2) a variance to erect a 4-foot fence.

Byrwa stated that the Village Planning Board reviewed a request for special use and site plan approval for Ascension of Christ Lutheran Church to erect a recreational structure adjacent to the east side of the existing building facing towards property zoned and used for offices. The play structure would occupy approximately 370 square feet of a fenced area along Pierce. Church related accessory structures are permitted uses after special approval in an R-2 district. The proposal included erection of a 4 ft. high fence around the structure in lieu of a 36 inch high fence allowed in a side yard that abuts a road.

The Planning Board reviewed the proposal and held a public hearing on June 27, 2007. Comments and suggestions from the Planning Board were incorporated in revised drawings submitted by the applicant. The Planning Board recommended approval to Council of the special use and site plan subject to the applicant receiving variances from the Zoning Board of Appeals as specified. Should the variances be approved, Council would hold a public hearing and consider final approval of the special use and site plan.

Byrwa displayed photographs of the church property located on the southwest corner of Pierce and 14 Mile Road. He commented on the new dumpster location. Byrwa pointed out the proposed location of the play structure and the four foot high fence in the side yard area.

Tillman, Planning Board member, related that the applicant made several changes to the plan at the suggestion of the Board. The location of the play structure was a topic of discussion. The applicant did not want young children to walk across the parking lot to access a play structure in the rear of the property. The location of the play equipment in the side yard connected to the building was selected for safety reasons. The fence was proposed to contain children and provide security. It was noted that the play area would not be used by the public.

Rev. Thomas Zucconi, pastor of Ascension of Christ Lutheran Church and resident at 31464 Sleepy Hollow, believed that the request is reasonable and involves a hardship and practical difficulty. This is the only viable area for locating the play structure. Moving the equipment to the southwest corner would require children to walk across the parking lot, and it would position the play structure across the street from Kirkshire residents. The four foot fence would be

screened with greenery. Additional trees in the area will be provided as requested by the Planning Board. Bill Baldner representing Clifford Wright Associates Architects is present to answer questions of the Board.

Schafer questioned the need for the play structure, the hardship involved, and the reason for requesting an extra foot of fence height if the area will be screened with shrubs.

Rev. Zucconi responded that the congregation has a large population of children from 1-10 years old with no place for them to play. They want to have a family friendly church with a safe place for children to congregate. It is believed that a four foot fence will give parents piece of mind and provide more security for the children. The play area will be monitored when it is used. In answer to an inquiry, Zucconi indicated that the play area will be used on Sundays and another morning during the week. The Church has been in the Village for over 50 years, and there is no additional property available for expansion. They want to be good neighbors and hope that this proposal is acceptable to the community. Rev. Zucconi distributed a rendering of the play structure.

Questions from Board members were addressed by Byrwa. Tillman remarked that the Planning Board reviewed ingress and egress issues and visibility issues related to the curb cut onto Pierce.

Needham expressed the view that the survival of a church is dependent on young families with children. He thought that it would be a hardship to relocate the structure to any other place on the property.

Robert Smith of 16907 Birwood stated that he lives one block south, where he can view the green space where the play structure is proposed to be located. He does not want to see the grassy area that serves as an entrance into Beverly Hills replaced by a fence and a brightly colored, 14' high play structure. He stated that his objection to the proposal would be moderated if a portion of the grass could be maintained south and north of the driveway. Smith questioned whether the private play area would represent an attractive nuisance.

Tillman mentioned that the applicant agreed to plant six canopy trees along that area at the request of the Planning Board. Verdi-Hus concurred that planting evergreen trees would temper the visual effect of the play structure.

William Gray of 16907 Kirkshire commented that Pierce is a main artery of the Village as far as walking, jogging and biking, and preserving green space is important to the community. He expressed the view that the proposed 14 ft. play structure would decrease the value of the homes in the area. Gray asked the Board to consider the placement of this play structure at the rear of the property.

In answer to an inquiry from the Board, Byrwa believed that the Church has no available parking that would allow them to remove existing spaces and meet ordinance requirements.

Bill Baldner, architect representing the Church, commented on the ordinance requirements for parking. The Church is required to have 68 parking space; there are 65 parking spaces on the site. He believed that the Church received a variance from the ordinance at some point.

Mercer understood that this request for variance would not be needed if Church officials decided to erect the play structure and fence in the rear of the church property, which is across the street from houses on Kirkshire. The Planning Board would be required to review and approve the site plan and special use.

Decision: Motion by Fahlen, second by Needham, to approve the request to erect a play structure in the side yard at Ascension of Christ Lutheran Church at 16935 W. 14 Mile Road based on Site Plan #80115.

Board members discussed the motion. Consideration was given to the fact that the play structure and fenced area would be located at an entrance to the Village. Members questioned whether there was an undue hardship because there are areas at the rear of the property where the structure could be located without a variance. It was noted that reducing the number of parking spaces on the site to a number below the required amount would require a variance from the Zoning Board.

Roll Call Vote:

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| Francis | - no |
| Mercer | - yes |
| Needham | - yes |
| Schafer | - no |
| Tillman | - no |
| Verdi-Hus | - no |
| Fahlen | - no |
| Farris | - no |

Motion fails (6 – 2).

The petitioner commented that proposal will be reviewed. The request for a variance on fence height was tabled.

PUBLIC COMMENTS

Council liaison Peddie commented on the interesting and difficult nature of the cases before the Board.

ZONING BOARD COMMENTS

Tillman commented that it is important for the Village to maximize the value of property in the community and therefore maximize revenues. It should be done in a way so as not to change the character of the neighborhood. She questioned whether there is a way in which people can achieve some of their goals in terms of enhancing property without having to prove a hardship in every case if a request is modest and reasonable and not egregious in terms of community standards.

Schafer remarked that “hardship” is the standard of law with respect to variances. Tillman proposed amending ordinances so that a variance is not required in every situation. Redevelopment or enhancement of property values should be encouraged.

Fahlen commented that the Master Plan states that there are a small number of variances requested compared to the number of building permits issued by the Building Department each year.

Mercer mentioned that having a Planning Board member sit on the Zoning Board proved to be valuable this evening in terms of the second case. He referred to the first case and expressed a concern with the ordinance language in terms of the average front setback standard.

ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

Needham 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 Tim Mercer to the office of Vice-Chairperson of the Board. Schafer nominated Tillman as Vice-Chair. Tillman declined the nomination. There were no further nominations. Tim Mercer was elected as Vice-Chair by acclamation.

Motion by Fahlen, second by Tillman, to adjourn the meeting at 9:52 p.m.

Motion passed (8 – 0).

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

**Ellen E. Marshall
Village Clerk**

**Susan Bernard
Recording Secretary**