

Present: Chairperson Schafer; Vice-Chairperson Mercer; Members: Brady, Davis, Francis, Needham, Verdi-Hus and Tillman

Absent: Farris

Also Present: Building Official, Byrwa
Council Liaison, Berndt

Chairperson Schafer called the meeting to order at 7:30 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road

APPROVE MINUTES OF ZONING BOARD MEETING HELD FEBRUARY 9, 2009

Motion by Tillman, second by VerdiHus, that the minutes of a regular Zoning Board of Appeals meeting held on April 13, 2009 be approved as submitted.

Motion passed (8 – 0).

CASE NO. 1216

Petitioner/Property: Vincenzo Iavicoli
20605 W. 14 Mile Road
Sidwell #03-202-004

Village Ordinance: 22.08.100 Accessory Buildings, Structures and Uses in Residential Zone Districts: a. No accessory buildings, **structures**, or uses shall be erected in the front or required side open space or within permanent easements.

Deviation Requested: To obtain a variance to allow two satellite dishes to remain in the front yard.

Byrwa displayed pictures of the property and house while pointing out two satellite dishes on the front yard. The house is located on 14 Mile Road a couple of blocks west of Evergreen Road. The southern portion of the 1.79 acre lot is wooded; lilac bushes planted along the 14 Mile Road frontage partially screen the satellite dishes. The satellite dishes are approximately 2 ft. in diameter and sit on a stand that is no more than 5 ft. high. The dishes are pointed in a direction that will pick up satellite exposure without being blocked by trees.

Byrwa referred to Section 22.08.320 of the Municipal Code, Satellite Antenna Regulations, adopted about 20 years ago when some satellite dishes were 8 ft. in diameter. Many of the ordinance requirements are outdated. The ordinance definition of satellite dish indicates a diameter of over 3 feet. There is another section of the ordinance that grants leeway to television signaling antennas to be mounted on the house as long as the equipment does not exceed 10 ft. over the building height of the house. A dish of this size could have been located on the roof of the house without a variance.

The Village has not been regulating satellite dishes other than their location on the property. Byrwa stated that he determined these to be accessory structures, which should have been located in the rear yard or on the house.

Schafer stated that the Zoning Board is empowered to grant a variance from the provisions of the ordinance if five or more members concur that a variance should be granted. He outlined the factors that are relevant to the decision in terms of granting a dimensional variance.

The petitioner Vincenzo Iavicoli stated that he has been renting the property as of last August and lives there with his wife and two children. He explained that he was a customer of Dish Network at his previous house in Birmingham; he was told by company technicians that there was not an adequate location to receive the signal at the Beverly Hills house due to high trees on the site. He was also informed that it was not feasible to mount the dish on the roof of the house. The petitioner mentioned that Comcast digital cable did not provide the Italian channels that his family wanted to receive. He contacted Dish Network again in September of 2008, at which time technicians advised him that a satellite signal could only be received from the location in the front yard where the two dishes are currently located.

Iavicoli was subsequently informed by the Village building department that the satellite dishes located in his front yard were in violation of the ordinance. He applied for a variance from the Zoning Ordinance in lieu of removing the dishes.

Iavicoli asserted that Dish Network technicians reviewed the site including the house and roof prior to determining that the front yard location was the only area where the signal was not blocked by trees. Iavicoli attempted to obtain AT&T service, but it is not offered in their area at this time.

Questions from Board members were addressed by the petitioner. It was suggested that Iavicoli plant evergreen trees in front of the satellite dishes to screen them from 14 Mile Road. The petitioner said this was an acceptable condition, and he could talk to the property owner about how to proceed with landscaping.

Kathleen Berwick of 31381 Kennoway Court expressed the view that satellite dishes located in the front yard are unsightly and set an unfavorable precedent. She would rather see the satellite dish on the roof than in the front yard.

Schafer read a letter from a homeowner within 300 ft. of the property in question. R.J. Dreyer and Jacqueline Dreyer of 1989 Crosswick Road in Bloomfield Township objected to the deviation requested from the Zoning Ordinance. They wrote that there is inadequate landscaping to screen the view of the dish equipment from the road, and they did not understand why Dish Network equipment could not be installed on the house.

Board member Davis asked if there was documentation from Dish Network indicating that this was the only place on the property where the signal could be received. Iavicoli submitted a document from Dish Network to that effect.

Schafer stated that the property owner has submitted a letter to the Village Building Department authorizing the tenants to apply for a zoning variance to allow two satellite dishes to remain in the current location on the property. Schafer understands the petitioner's wish for specific Italian channels. These channels may be available from AT&T when it extends its U-verse product to that area of Beverly Hills. An evergreen tree screen would remove the impact on the neighborhood. There is no health or safety issue; no injustice being done if the satellite dishes are not in view. Schafer does not know if the Board has enough information to be assured that there is no other place on the property that would be a lesser variance. The Board is being asked to change the law in the applicant's favor to allow these satellite dishes. His concern was that the next request for an accessory structure in that location may be less acceptable.

Tillman asked how long the petitioner will remain in the house or area. Iavicoli responded that they anticipate living in the house at least until June of 2010. Tillman proposed placing a time limit on the variance. Francis suggested tying the variance to his tenancy.

Schafer did not think that the ZBA was empowered to grant a variance of limited duration on a dimensional variance. The Board is able to limit a use variance in duration. If it is the will of the Board, the case could be tabled for a month in order to determine whether a condition could be applied to limit the duration of the variance.

Brady said that the petitioner could table his case in order to talk to Dish Network about making further attempts to find another location for the satellite dishes. Iavicoli said that he has spent time and money switching cable services. He would consider changing to the AT&T product when it was available.

There was discussion by Board members as to whether the request should have been for a use variance rather than a dimensional variance. Schafer stated that the request is for a dimensional variance because the building official is interpreting the satellite dishes as structures.

Byrwa commented that he made the determination that the satellite dishes were structures in the front yard based on a past case involving a gate in the front yard that went to a jury trial in District Court. A definition of a structure is anything permanently mounted off the ground whether it is a gate or satellite dish or swing set. The petitioner is appealing the building official's decision to deny the front yard location of the satellite dishes, which he determined to be structures.

Mercer questioned whether the petitioner was informed that he could have requested an interpretation of the ordinance as to whether he could have sought a use variance. The Zoning Board can set durational limits on a use variance.

Schafer maintained that it is not the function of the Village office or Zoning Board to give the petitioner legal advice. The Zoning Board prepared a handbook that should be distributed by the Village office to potential applicants. If applicants do not understand the process, they can read the ordinance or request legal counsel.

Schafer proposed that the Board table Case 1216 in order to seek clarification from the Village Attorney as to whether the Zoning Board is allowed to place a term of duration on a dimensional variance of any type, either a more permanent or less permanent structure. It was indicated that the petitioner could choose to request an interpretation of the ordinance and subsequently request a use variance.

If the Board's interpretation was that this is not a structure within the definition of the ordinance, the petitioner would require a use variance for the dishes to remain in the front yard for a certain amount of time. The ordinance states that no detached accessory buildings, structures, or uses shall be erected in the front or required side open space or within permanent easements. It was noted that a use variance requires six affirmative votes. It would be a two-step process to request an interpretation and request a use variance.

Tillman commented that she was sympathetic to the request set forth by the petitioner and would like to be in a position to approve the request for a period of time until the petitioner vacates the rental property. If a variance was to be granted to locate a satellite dish in the front yard, it should be as restrictive as possible. The dishes should either be placed on the building or allowed in the front yard for a limited duration. This would require an interpretation from the Village Attorney on whether the Board can place a duration condition on the dimensional variance before this body.

Motion by Tillman, second by Brady, to table Case No. 1216.

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

Schafer will contact the Council president to advise him that the ZBA will consult with Attorney Ryan to receive clarification on the issue of whether the Board is empowered to put any kind of time limitation on a dimensional variance request. Alternatively, the petitioner can choose to modify his request or submit a different request and ask for an interpretation of the ordinance as to whether the satellite dishes are structures or whether this appeal could be submitted as a use variance. The Board can grant a use variance for a limited duration. Schafer will communicate the response from Tom Ryan to the Board and the building official.

PUBLIC COMMENTS

None

ZONING BOARD COMMENTS

Schafer said that he understands the desire of the Board that applicants be aware of Zoning Board of Appeals procedures. The Board drafted a handbook that describes the different types of cases heard and a layman's view of the criteria on which the Board will decide such cases. This document should be provided to all petitioners so that they are prepared to come before the Board. Byrwa stated that the handbook is available to the public at the municipal offices.

Schafer outlined the process for filing a request for variance. If the building official turns down a request for a building permit, that person has a right to appeal the building official's decision by

requesting a variance from the ordinance or by filing a request to come before the Zoning Board for ordinance interpretation. The Board is constrained in some fashion by what it is supposed to consider. This Board may desire a better understanding of how cases come through the building official's office or, depending on budget deliberations, how the process will work in the future in terms of bringing cases before the Board. The Zoning Board may want to have a closed session at some point to review the procedures with its goal being to operate as efficiently as possible and have everyone understand the process.

BUILDING OFFICIAL COMMENTS

Byrwa provided further background on how Case 1216 was brought before the Zoning Board.

Motion by Brady, second by Needham, to adjourn the meeting at 8:40 p.m.

Motion passed (8 - 0).

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary