

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

Absent: None

Also Present: Village Manager, Wilson

Chairperson Schafer called the meeting to order at 7:30 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road. Schafer welcomed newly appointed member Kathleen Berwick.

**APPROVE MINUTES OF ZONING BOARD MEETING HELD MAY 11, 2009**

Motion by Mercer, second by Francis, that the minutes of a regular Zoning Board of Appeals meeting held on May 11, 2009 be approved as submitted.

Motion passed (8 – 0).

Case 1216 was deferred to later in the meeting because the petitioner was not present.

**CASE NO. 1217**

**Petitioner/Property:** Kurt and Ann Jones  
31850 Waltham  
Sidwell #02-303-001

**Village Ordinance:** Section 22.08.150 Fence, Wall and Privacy Screen Regulations state: 1) fences must be “at least 35% open to air and light”; 2) “A fence in a side yard that abuts a road or street shall not exceed 36 inches in height”.

**Deviation Requested:** 1) To erect a solid fence; 2) To allow a 6 foot high fence in the side yard.

Manager Chris Wilson displayed photographs of the property and house facing Waltham and abutting Beverly Road on the side yard. Waltham is blocked off to traffic at Beverly Road. Wilson indicated the proposed location for a 6 ft. high fence along Beverly Road. The driveway comes off Beverly Road and there is a row of bushes planted west of the driveway to the front lot line and a few shrubs east of the driveway. The petitioners are asking to construct a 6 ft. privacy fence from that point to the rear lot line.

The ordinance requires that a fence in a side yard abutting a road shall not exceed 36 inches in height and may extend into the front yard. Only a small portion of the proposed fence will be erected in the side yard with most of the fence located in the rear yard. A fence in the rear yard cannot exceed 48 inches in height. The ordinance requires the fence to be to be at least 35% open to air and light. The petitioners are requesting a variance to erect an opaque privacy fence that is 6 ft. in height.

Beverly Road is 87’ wide in this area. The proposed fence will be located 45’ from the center of the road to the fence line, which would meet easement requirements. The proposed fence on the side lot line will be approximately 46 ft. long.

Property owners Kurt and Ann Jones were present. Kurt Jones pointed out that there had been a row of arborvitae bushes planted in the location where he is now requesting to construct a 6 ft. fence. The bushes died and were removed. The petitioners' original intent was to plant greenery to screen their patio from traffic, bikers, and joggers travelling along Beverly Road. Two attempts to plant a row of arborvitae bushes failed due to the location of a mature black walnut tree in close proximity to the area. The petitioners contacted a tree service and learned that the roots of a black walnut tree are toxic to many varieties of plantings including arborvitae. Jones noted that a row of arborvitae bushes exist on the west side of the driveway.

Jones outlined why he thought the variance should be granted as requested. The problem was not self created by the petitioner. He attempted to create a living screen before requesting a privacy fence after two attempts at planting shrubs. In addition, the situation is fairly unique to his property in that many of the houses along Beverly Road are situated with the front of the house facing Beverly Road with the backyards shielded from the street. He related that a house on Mayfair abutting Beverly Road appears to have a 6 ft. high fence along the side lot line.

The variance requested is not contrary to the public interest. Waltham is blocked at Beverly Road so there is no issue in terms of line of sight from oncoming traffic. The existing bushes and proposed fence are set back from Beverly Road and would not block the view of a vehicle exiting the driveway. Jones noted that there are sidewalks on the other side of the road.

Jones stated that granting the variance would do substantial justice in terms of providing privacy in their back yard. If the rear of their house bordered Southfield, Greenfield or 13 Mile Road, a 6 ft. privacy fence would be allowed. Beverly Road has more traffic than most local streets in the Village. Jones believes that he has demonstrated a practical difficulty in this case and that the Zoning Board has reasonable discretion to grant a variance.

Schafer suggested that the petitioner could erect a privacy screen that is located a minimum of 10 ft. from the lot line with a total horizontal length that does not exceed 25% of the lot line portion of the rear yard. A privacy screen can be 6 ft. in height above grade. The petitioners may want to explore privacy screen options in the event their appeal is denied.

Verdi-Hus thought that there were plants that could grow near a black walnut tree. She suggested that the petitioner consult a specialist to determine which plants would thrive under the existing conditions. Jones responded that he did not want to remove the arborvitae that were doing well. He did not think that the species of shrubs that grow in the vicinity of a black walnut would complement the existing arborvitae plantings.

Verdi-Hus also proposed erecting a privacy screen closer to the house and patio, which would not require a variance. Jones replied that he wanted to have a consistent line of greenery plus fencing along the property line.

Berwick commented that an Internet search turned up plantings, including a species of arborvitae, that would grow near a black walnut tree. Tillman suggested that the petitioner consider constructing a berm with plantings that would provide a certain degree of privacy.

Schafer said that the Board needs to hear why the petitioner needs a 6 ft. high solid fence in lieu of a 4 ft. high 35% open fence. We are looking at the least variance that can be granted and still do justice to the homeowner and the community.

Questions from the petitioner regarding a privacy screen and the 35% open fence were addressed by the Board.

The petitioners submitted a letter stating that they have spoken with the following neighbors who have no objections to the proposed 6 ft. privacy fence.

Gail Evo	19481 Beverly Road
Joseph Troy	19400 Beverly Road
Marilyn Johnson	31991 Carlelder
Neal Hoyer	31830 Waltham
Connie Jordan	19450 Beverly Road
Mrs. Lee Meyrowitz	19470 Beverly Road

Mr. and Mrs. Neal Hoyer, next door neighbors at 31830 Waltham, were in support of the fence requested by Kurt and Ann Jones. The Hoyers understood the need for privacy from a busy road with a lot of foot traffic. Mrs. Hoyer thought that constructing a privacy fence 10' from the lot line would result in not being able to use a portion of the yard on the other side of the fence. She believed that the solution was to erect an aesthetically pleasing fence. Neal Hoyer added that the fence would also provide privacy for their backyard.

Schafer thanked the petitioners for their informative presentation; he appreciated their efforts to create a living screen. There are clearly some practical difficulties based on the petitioner's experience. However, there may be other options for achieving privacy. The Board has to consider whether this is the least possible variance it can grant. Schafer did not think that a solid 6 ft. fence was common in the neighborhood. Privacy screens are allowed to be erected 10 ft. from the property line. The petitioners could investigate the location of their property line to determine whether the placement of the fence they are proposing is 10 ft. from the property line, which would eliminate the need for a variance.

Mercer commented on the proposed location of the fence. He suggested that the case presented demonstrated practical difficulties and a unique situation.

Motion by Tillman, second by Davis, that the variance be approved to allow the petitioner to install a 6 ft. high privacy fence 45 ft. from the center of Beverly Road along 46 ft. of the side lot line.

Roll Call Vote:

Berwick	- yes
Brady	- no
Davis	- yes
Farris	- no
Francis	- no

Mercer - yes  
Schafer - no  
Tillman - no  
Verdi-Hus - no

Motion failed (6 – 3)

**CASE NO. 1216**

The petitioner Vincenzo Iavicoli was not present. The chairperson asked that Village Administration contact the applicant to determine how he would like to proceed with his request for variance.

Motion by Mercer, second by Brady, to retable Case 1216 pending a determination of how the petitioner decides to proceed.

Motion passed (9 – 0).

**PUBLIC COMMENTS**

None

**ZONING BOARD COMMENTS**

Schafer informed the Board that the Village Council passed an ordinance amending Chapter 22, Section 38 of the Zoning Ordinance Creating a Zoning Board of Appeals, which will allow Council to appoint alternate members to the Zoning Board.

Tillman related that she was appointed as a member of the Zoning Board of Appeals and no longer sits on the Village Planning Board. She had been a dual member of the ZBA and Planning Board.

Schafer stated that he consulted with the Village Attorney on whether the Zoning Board is authorized to place a time limitation on a dimensional variance request. Attorney Tom Ryan provided a written response stating that it was his opinion that a durational limitation may not be placed on a non-use variance by the Zoning Board of Appeals. Schafer also spoke with planning consultant Brian Borden from LSL Planning regarding this issue. He will discuss these responses with the Board at the time that Case No. 1216 is heard.

On behalf of the Board, Schafer thanked Larry Needham for his years of service on the Zoning Board of Appeals and for his dedicated service to the Village over the years. He will be missed.

Brady asked if administration has looked into whether the Beverly Hills Club has modified its building to a more intensive use than shown in its request for variance in Case #1206.

Schafer reviewed that the ZBA approved a request for variance from the Beverly Hills Club in August of 2008 relative to off-street parking requirements. The approval allowed the Club to construct a yoga studio addition in the existing facility. One of the conditions attached to the ZBA approval was that the Beverly Hills Club would not change the club property to a more

intensive use than was shown in the presentation. While the yoga studio has not yet been built, the Club has converted a storage or office space into an area for sale of weight loss products. Schafer thought that this was something that the Village Code Enforcement Officer could investigate.

Schafer reported that Detroit Country Day School won its case against the Village. The judge decided to grant a variance from the Village Ordinance requirement to install sidewalks on the perimeter of the school property in conjunction with new construction plans.

Manager Wilson stated that the Village is seeking leave to file an appeal with the Circuit Court but does not expect to hear anything before the end of the year. He had contacted the Michigan Municipal League due to concerns with the standards applied in the opinion issued by the judge. The MML Legal Defense Fund has agreed to file a brief on the Village's behalf to the Michigan Court of Appeals if the court will hear the case. There followed some discussion of the ruling and its possible ramifications. The sidewalk issue will be decided by the Court of Appeals, and both parties will be bound by the final decision in this case. Wilson thought that Council would decide future Detroit Country Day School site plan issues on their own merit and keep the sidewalk issue separate.

Motion by Tillman, second by Brady, to adjourn the meeting at 8:56 p.m.

Motion passed (9 – 0).

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

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

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