

Present: Chairperson Schafer; Members: Berwick, Brady, Donnelly, Francis, Tillman Verdi-Hus

Absent: Davis and Farris

Also Present: Village Manager, Wilson
Council Liaison, Mercer

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 APRIL 12, 2010

Motion by Brady, second by Francis, that the minutes of a regular Zoning Board of Appeals meeting held on April 12, 2010 be approved as submitted.

Motion passed (7 – 0).

Chairperson Schafer stated that a vote of five or more in favor is required to grant a dimensional variance. He reviewed conditions that need to be established in order to grant a variance.

CASE NO. 1225

Petitioner/Property: Terrence Robinson
One Brady Lane
TH24-10-102-048

The Village Ordinance: 22.08.150 FENCE, WALL AND PRIVACY SCREEN REGULATIONS:

B. Requirements in Single Family Residential Districts: 2. Privacy Screens: Privacy screens that do not exceed six feet in height above grade are permitted as follows: a. In rear and side yards to enclose an area on up to three sides only that is located a minimum of 10 feet from any lot line and with a total horizontal length that does not exceed 25% of the lot line portion of the rear yard.

Deviation Requested: Petitioner requests variances to retain a nonconforming privacy screen.

Manager Wilson presented background on this case. The petitioner erected a 6 ft. high, 180 ft. long fence on his eastern property line; the total side lot line is 251 feet. The fence is not in compliance with the Village Fence Ordinance with respect to height; it is not 35% open to air and light; and it extends toward of the front of the lot farther than the rear of the house.

The petitioner presented his request for a variance (Case 1222) to the fence ordinance at the March 8, 2010 Zoning Board meeting and was denied by a 4-4 vote. At the April 12 meeting, Westwood Homeowner Association President Phil Keila had a discussion with Board members to determine if there was a way that the structure erected by Mr. Robinson could be retained as a privacy screen. He concluded that it would be appropriate if Mr. Robinson came back before the Board with a proposal that was materially different from the petition previously submitted.

Wilson stated that the petitioner has resubmitted a request for variance to allow a privacy screen on the east property line. Privacy screens are permitted with conditions. The privacy screen is not to exceed 25% of the rear lot line. Twenty-five percent of the petitioner's 180 ft. rear lot line would be 45 ft. The Ordinance requires that privacy screens be located a minimum of 10 ft. off of the lot line.

The petitioner provided the following description of his appeal on the petition to the Zoning Board of Appeals:

1. Unable to locate privacy screen 10 feet off property line due to:
 - a. Existing utility easement per survey.
 - b. Existing driveway adjacent to easement.
2. 45 feet limitation for privacy screen (25% of rear lot line) does not provide needed screening of neighbors yard. There is a need for 90 feet of screening to provide privacy from above ground pool and storage shed.
3. Applicant agrees to provide plantings to cover the northernmost part of the fences or that part of the fence that faces 13 Mile Road. In addition, applicant agrees to stain fence by September of 2010.

Wilson indicated that the petitioner is requesting 90 feet of privacy screening, which would mean that the homeowner would take down the remaining 90 feet of fencing if a variance was received for a privacy screen.

Wilson displayed photographs of the house at One Brady Lane and various views of the existing fence on the property. He pointed out the portion of the fence that would be removed from the front yard. The Village considers the front of the house to be facing north toward 13 Mile Road. Access to the home is off of Lahser Road from Brady Lane.

Phil Keila of 2 Riverbank Drive was present representing the petitioner Terrence Robinson, who was present in the audience. Keila remarked that he was asked as president of the Westwood Homeowners Association to find a way to save the structure in question. He thought that Mr. Wilson adequately outlined the request that was made for a variance to allow a privacy screen on the petitioner's property. Keila believed that the request for variance was logical based on Village ordinances. It is the hope of area homeowners that the Board will approve the request to allow the structure to remain. Keila referred to letters written to the Board by neighbors; he submitted a petition supporting the privacy screen signed by members of the Westwood Community. They believe that the privacy screen is an aesthetic and functional addition to the neighborhood.

Schafer asked if the petitioner has a map that shows the exact length of the fence that will remain. The survey drawing does not indicate where the 90 foot fence ends. He assumes that the request is to retain that portion of the fence located on the side and rear yards.

Keila responded that Mr. Wilson requested that the applicant stake out the 90 foot fence that is requested. The applicant assumed that there would be a picture of the fence as staked.

Keila explained that the intent of the request is to screen Mr. Robinson's property from his east neighbor where there is an above ground pool, a detached garage and a storage shed. The beginning of the fence would line up with the rear wall of the neighbor's home. The proposed location of the privacy fence was based on the need to complete the function of screening the petitioner's back yard from a very busy backyard east to him. The resident, Joanie Wood, wrote a letter of support for the fence. The fence would provide sufficient screening for them to enjoy their home and above ground pool and also would give the petitioner privacy.

Schafer asked why a privacy screen is needed as opposed to plantings. Keila said that the Westwood Association tried to find a neighborhood solution. The Woods liked the fence, and the Westwood community liked the fence on the basis that it was aesthetic and functional. Keila said that a screen of arborvitae evergreen trees may not thrive well enough to provide a screen. In addition, maintenance of evergreens by the property to the east may be an issue.

Berwick understood the need for privacy and related her original opposition to the density of the Westwood development. She did not like the brown color of the fence in question. Berwick thought that a better option to the fence would be evergreens, either arborvitae or Blue Spruce trees.

Tillman asked if the petitioner explored the possibility of providing privacy with greenery in lieu of a fence. Keila responded that the association members talked about landscaping. Evergreens require maintenance and can be subject to disease. It was the unanimous opinion of the Westwood community and adjacent homes to support the fence.

Verdi-Hus considered the existing fence to be unattractive. She proposed that a better visual solution would be to have 8-10 ft. sections of privacy screen interspersed with sections of greenery.

Schafer commented that the utility easement indicated in the survey drawing appears to be 12 ft. off the property line. He thought that there may be room to erect a privacy screen 10 ft. from the property line.

In answer to an inquiry, Wilson indicated that the privacy screen as requested would extend 90 ft. north from the southern point of the fence. It would not extend into the front yard.

Schafer stated that the Board has received a Petition Supporting Privacy Screen located at 1 Brady Lane with 23 signatures from residents of Riverbank and one resident of 13 Mile Road. The petition states that the undersigned support the privacy screen and that it enhances their neighborhood/property. They request that the Zoning Board approve the request for variance.

Ted Gillary of 3 Riverbank Drive, whose house abuts the Wood property, said that he has watched the petitioner's property change hands and decrease in value over the years. The community is thankful that the Robinsons purchased the property and saved the home from further disrepair. Gillary thought that the screening fence was needed and he supported the request for variance. He mentioned that a problem with greenery is that the property owner on the other side must be willing to maintain the plantings. The fence will help establish some value to a property that has changed hands over the years.

Schafer summarized that there are elements that favor granting a variance. The neighboring property owner and the rest of the neighborhood support the privacy screen. Schafer believes that this situation is unique to the property in question. The situation involves a house that was previously fronting towards 13 Mile Road.

On the other hand, the fence ordinance represents the voice of the community and what people want to see. Six foot high fences are restricted in Beverly Hills, and other options are encouraged. This fence is already in existence. The petitioner is willing to make accommodations and bring the request down to a lesser variance. Schafer is not convinced that the proposal represents the least amount of variance that would eliminate or reduce the hardship to a level that the community and this property owner would find acceptable. He is not convinced that the fence could not be relocated 10 ft. from the property line.

Schafer reiterated that the petitioner needs five affirmative votes to grant a variance. The petitioner is allowed to table his request if less than the full nine member Board is seated. There are seven members present this evening.

Tillman concurred that there appears to be space to move the privacy screen 10 ft. off the lot line, which would result in requiring a lesser variance to retain the privacy screen. She voiced the concern that, if this variance was approved, the next person who erected a fence to screen a situation with an adjacent neighbor would want a similar variance.

Keila commented that it was his understanding that a decision of the ZBA is not precedent setting and each case is decided on its own basis. Tillman stated that the Board wants to show that it logically considered the legal position for decisions made.

Keila related that the Westwood community and the petitioner are looking for guidance in their quest to keep some type of structure on the property. Keila consulted with the property owner Terrence Robertson and requested that the case be tabled until such time as there is full complement of the Zoning Board of Appeals.

Brady stated that he was inclined to support the request for variance. The fence can hardly be seen from the road. The way the petitioner's house is configured compared to the adjacent neighbor's house is unusual. Brady would like more information about the location of the utility easement and its impact on the fence and driveway.

Donnelly did not think that moving the fence 10 ft. from the property line would make a difference. The Zoning Board considers the ordinance; he suggested that the Board should not dictate aesthetics.

PUBLIC COMMENTS

None

ZONING BOARD COMMENTS

On behalf of the Board members, Schafer congratulated Tim Mercer on his appointment to Council and thanked him for his service on the Zoning Board of Appeals. He said that the Zoning Board would be happy to have him back at some future time.

Schafer stated that the terms of three ZBA members are expiring on June 30 – Michael Farris, Maureen Francis, and Neil Davis. He understood that neither Mr. Farris nor Mr. Davis are seeking reappointment; this would have been their last meeting. Ms. Francis is seeking reappointment. Schafer thanked Mr. Davis and Mr. Farris for their service on the Zoning Board of Appeals.

Mercer commented on the reappointment process and provided information on the applications that have been received for the positions. There should be a full contingent of the ZBA for the next meeting in July. Mercer noted that the appointment of alternate member Donnelly on the Zoning Board would leave an alternate position open. The vacant position will be announced by Council.

Schafer mentioned that one of the alternate members of the Zoning Board has been unable to attend meetings when requested. He suggested that there should be terms and standards identified for alternate members of the Zoning Board.

Tillman and Brady indicated that they may not be available to attend the July 12 meeting of the Zoning Board. Wilson asked members to contact the Village offices soon if they cannot attend the July meeting.

MANAGER COMMENTS

Wilson stated that he will provide Zoning Board members with information pertaining to Case No. 1225 including the distance of the utility easement and driveway from the existing fence. He will also clarify the location of the trees in that area and whether the fence is constructed on the lot line. Schafer remarked that the petitioner should provide adequate information to state their case for a variance request.

Motion by Tillman, second by Brady, to adjourn the meeting at 8:39 p.m.

Motion passed (7 – 0).

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary