

Present: Chairperson Schafer; Members: Berwick, Brady, Donnelly, Freier, Meah, Mueller, Rass and Tillman

Absent: Francis and Verdi-Hus

Also Present: Village Clerk/Asst. Manager, Marshall
Council Liaison, Mercer

Chairperson Schafer called the meeting to order at 7:32 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road. He welcomed the newly appointed Board members and noted that alternate Board members were present to fill the seat of two absent members.

APPROVE MINUTES OF ZONING BOARD MEETING HELD JUNE 14, 2010

Motion by Tillman, second by Donnelly, that the minutes of a regular Zoning Board of Appeals meeting held on June 14, 2010 be approved as submitted.

Motion passed (9 – 0).

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 variance to Fence Ordinance 22.08 to convert non-conforming fence into non-conforming privacy screen.

Assistant Manager Marshall displayed photographs of the property and presented background information on the request for variance. A slide of the property survey depicts the location of the 6 ft. high fence erected along 180 ft. of the eastern property line. 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 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.

The property owner presented a revised petition at the June 14, 2010 Zoning Board meeting asking to retain a 90 ft. privacy screen on the east property line and take down the remaining 90 ft. of fencing. The petitioner's request to postpone a decision on the case at that meeting was

allowed. Mr. Robinson has since amended his petition to request a 64 ft. long privacy screen. The ordinance allows a 45 ft. privacy screen based on the length of the rear lot line.

The petitioner requests that the fence remain on the lot line in lieu of the requirement for a privacy screen to be located a minimum of 10 ft. from any lot line. It is requested to allow the privacy screen to be 19 ft. longer than allowed by the ordinance (64 ft. in lieu of 45 ft. permitted).

Marshall displayed a photograph of the property illustrating that there are trees within the area ten feet from the existing fence. The location of the asphalt driveway and a 12 ft. water main easement is indicated in the photo by an individual standing at that point. Another picture showed the above ground pool and domed cover located in the abutting neighbor's yard. Marshall pointed out where the 64 ft. fence would end in relation to the back of the house. It was clarified that 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.

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.

Phil Keila of 2 Riverbank Drive, President of the Westwood Common Homeowners Association, was present representing the residents of the Westwood community. He related that Mr. Robinson's property was incorporated as part of the development when Westwood Common was developed in 1996. He reminded Board members that there are letters and a petition on file from contiguous neighbors as well as all residents of Westwood Common in support of the fence. The adjacent homeowner, Joan Wood, submitted a letter in favor of retaining the fence. It would provide screening for them to enjoy their home and above ground pool while affording privacy to the Robinsons.

Keila informed the Board that, if the variance is granted, Mr. Robinson will do some planting at the northern end of the privacy screen closest to Thirteen Mile Road so that the fence is not visible from the road. Keila reviewed that the variance is requested to allow the privacy screen to remain on the lot line because of the mature trees that are located within 10 feet of the lot line. There is also a utility easement and asphalt driveway in close proximity to the fence. The 64 ft. of privacy screen in lieu of the allowed 45 ft. fence is requested to screen the backyard from the adjacent neighbor's busy yard.

Chairperson Schafer and Mr. Keila addressed questions from Board members regarding specifics of the case, the reason for erecting the fence, the orientation of the house, whether a motion could include conditions, and whether there is a hardship involved with placing a fence adjacent to the utility easement. The primary purpose of the fence is to provide screening from the adjacent neighbor's pool and storage shed. In response to an inquiry, Schafer stated that it has not been determined whether the swimming pool and canopy over the pool in the neighbor's yard is in full compliance with Village ordinances. A durational limitation is not permissible when granting a dimensional variance. It was noted that the petitioner will remove 120 ft. of the existing fence if the variance is approved.

Berwick commented that the petitioner erected the fence without consulting with the Village regarding fence regulations. She proposed that landscaping could be used for screening rather than a fence.

Mueller commented that the fence is difficult to see from Thirteen Mile Road due to the existing vegetation. Donnelly remarked that the length of the fence is being reduced from the original proposal, and the neighbors in the subdivision support the request for variance. Freier concurred that the fence is not easily visible.

Schafer recapped the history of this request for variance, which first came before the Board in March. He discussed factors to be considered when reviewing this case. He mentioned the “Coming to the Nuisance” element whereby the petitioner knew how the adjacent property was being used when he bought his home.

There are certain elements that favor granting a variance. The neighboring property owner and the rest of the neighborhood have indicated support for the privacy screen. The situation does seem unique to the property in question. The fence is not likely to be seen from Thirteen Mile Road. The situation involves a house that was previously fronting Thirteen Mile Road.

On the other hand, the fence ordinance and privacy screen provisions represent the voice of the community. 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 than requested in June. Schafer is not convinced that the proposal represents the least variance that could be granted in this case.

There were no comments from the public on Case No. 1225.

Motion by Tillman, second by Donnelly, to approve the variance as requested to allow a 64 ft. privacy screen with the following conditions: 1) The fence shall not extend beyond the southeast corner of the dwelling; 2) The fence will be stained within 12 months; 3) Vegetation will be provided to screen the northernmost part of the fence from 13 Mile Road.

Roll Call Vote:

Berwick	- no
Brady	- yes
Donnelly	- yes
Meah	- yes
Rass	- yes
Schafer	- no
Tillman	- no
Freier	- yes
Mueller	- yes

Motion passed (6 – 3).

CASE NO. 1226

Case No. 1226 was postponed at the request of the petitioner earlier today. Marshall and members of the Board discussed the information to be submitted in connection with this appeal case.

ELECTION OF VICE-CHAIRPERSON OF THE ZONING BOARD OF APPEALS

Election of the chair and vice-chair of the Zoning Board of Appeals took place at its March meeting. Since that time, member Tim Mercer was appointed to fill a vacancy on the Village Council. Schafer opened the floor to nominations for vice-chairperson.

Donnelly nominated Michele Tillman to the office of vice-chairperson of the Board. There were no further nominations. Michele Tillman was elected as vice-chair by acclamation.

PUBLIC COMMENTS

None

ZONING BOARD COMMENTS

Schafer thanked the alternate members for their participation this evening and welcomed the new members of the Board.

MANAGER COMMENTS

None

Motion by Donnelly, second by Brady, to adjourn the meeting at 8:20 p.m.

Motion passed (9 – 0).

Todd Schafer, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary