

Present: Chairperson Schafer; Vice Chairperson Tillman; Members: Berwick, Brady, Donnelly, Francis, Meah, Rass and Verdi-Hus

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.

**APPROVE MINUTES OF ZONING BOARD MEETING HELD SEPTEMBER 13, 2010**

Motion by Verdi-Hus, second by Donnelly, to correct the minutes to show that Verdi-Hus was present at the September 13, 2010 meeting.

Motion passed (9 – 0)

Motion by Tillman, second by Brady, that the minutes of a regular Zoning Board of Appeals meeting held on September 13, 2010 be approved as amended.

Motion passed (9 – 0).

**CASE NO. 1226**

**Petitioner:** Heather Durren

**Property:** 31129 Fairfax  
Sidwell # 24-01-476-018

**Village Ordinance: 22.08.370 FOSTER FAMILY GROUP HOME-CHILD CARE CENTERS**

d. Setbacks: Child care centers shall have a minimum side yard setback of at least twenty-five (25) feet.

**Deviation requested:** A variance from required minimum side yard setback to continue operating a child care day center.

Wilson related that the mortgage survey submitted with the application does not clearly show the side yard dimensions. Information provided by the petitioner indicates that the north side yard setback is 16 feet and the south side yard setback is 19 feet. Wilson displayed photographs of the front of the house at 31129 Fairfax with views of the north and south sides of the property.

The petitioner has been operating a daycare business in her home without incident since 2004. The daycare is registered with the State of Michigan as a family in-home daycare to care for 1- 6 children in the home. Ms. Durren has petitioned the State of Michigan to convert to an in-home group daycare in order to care for 7-12 children. State regulations require every state licensed in-home group daycare to obtain approval from the municipality as to whether the facility meets zoning regulations. The Village ordinance requires child care centers to have a minimum side

yard setback of at least 25 feet. The variance is needed to meet State regulations for operating a daycare. The Village is in receipt of supporting letters from customers and area residents.

It was clarified that the petitioner's property is in compliance with the Village's zoning regulations with respect to the side yard setbacks. Section 22.08.370 (d) says that there must be a minimum 25 ft. setback to operate a child care center. Schafer related that Attorney Tom Ryan was asked about the rationale for the 25 ft. side yard requirement and responded that he thought that the distance was required for ambient noise. The mortgage survey shows that the distance between the petitioner's home and the adjacent home to the north is 29.5 ft.

The Board concurred that this case involves a dimensional or non-use variance even though it relates to a specific use of the property. Approval of the petition would require five affirmative votes.

The petitioner Heather Durren stated that she has run an in-home daycare since 1999. Her family moved to Beverly Hills in 2004 and re-opened the daycare in their house on Fairfax. She explained where the children play on the property, noting that there is a large backyard. The adjacent neighbor closest to the play area sends her children to the daycare.

Letters have been sent to the Village from surrounding neighbors in support of the daycare operation. Durren added that one neighbor who did not submit a letter called her to indicate that she had no problem with the daycare. Durren emphasized that she has received no complaints from neighbors during the six years that the daycare has been in operation in Beverly Hills. She called attention to the fact that children from the general neighborhood attend her daycare, which is convenient for area homeowners.

Durren stated that there is a hardship because there is no way they can change their property line to keep the daycare open. She registered with the State to run a family home. The law has changed recently in the State of Michigan to require approval from the Village in order to run an in-home group daycare.

The petitioner addressed questions from Board members regarding various aspects of the daycare operation, affect on surrounding property, traffic, and noise factors. There are currently six children using the daycare with a few part-time children. The operation is open from 7:30 a.m. until 6 p.m.

Berwick related that she was subjected to a disruptive neighborhood business that was operating illegally in her neighborhood. Daycares are different than other businesses, but Berwick was uncomfortable with businesses in residential areas. She expressed concern about the in ground pool. Durren responded that the no one uses the pool when the daycare is open.

Schafer questioned whether the 25 ft. side yard requirement applied to the petitioner's current situation. The Zoning Ordinance contains a definition for a Family Day Care Home for 1-6 children. There is also an ordinance definition for a Child Care Center for 7 or more children, but it refers to a structure other than a single-family dwelling. There appears to be a need to update the Village Zoning Ordinance to comply with State statute.

Adjacent neighbor Patricia Racco of 31093 Fairfax expressed her full support of Durren's daycare operation for 7 to 12 children. She mentioned that her three daughters go to the daycare next door. Racco did not think that sounds from the daycare are a concern to the neighborhood. There is a school across the street, which generates noise during recess times. Racco did not observe a problem with traffic.

Donnelly questioned whether the existence of a home daycare operation would limit the number of people who would want to purchase an adjacent home if it were for sale. Durren referred to the school across the street noting that children can be heard playing on the playground off and on all day. She did not think that any daycare noise would make a difference. Anyone purchasing a home in the area would know that there is a school in close proximity, which would be a draw for many people.

Letters in support of the daycare were received from the following customers and residents: Kim Lentine; Ann E. O'Connell of 16196 Madoline; Patricia Racco of 31093 Fairfax; Steve and Jill Urban of Berkley.

There was some discussion about the Zoning Ordinance section referenced in the application. Wilson stated that the Section 22.08.370 refers to Foster Family Group Home – Child Care Centers. There is a requirement in paragraph (d) that says: Setbacks: Child care centers shall have a minimum side yard setback of at least twenty-five (25) feet. Other than a definition for a Family Day Care Home for 1-6 children, there is no other Zoning Ordinance definition relating to in-home child care centers.

Schafer questioned whether the Village Zoning Ordinance needed updating with regard to child care centers to agree with State statute. He was not certain about the applicability of the side yard setback requirement to a family day care for 1-6 children. Wilson said that administration realized that there was some grey area involved with the petition and sought the advice of Attorney Ryan. The recommendation of the Village Attorney was to send the request for variance to the Zoning Board of Appeals.

**Decision:** Motion by Tillman, second by Verdi-Hus, to approve the request for variance from the minimum side yard setback requirement of 25 feet for child care centers because enforcement of the ordinance would create an undue hardship; also given the fact that this will be an in-home residential daycare for 1-12 children located across the street from a school and not a commercial operation.

Schafer summarized the standards that a petitioner must demonstrate to establish that a practical difficulty exists under Michigan Law to warrant relief by the granting of a dimensional variance by the Zoning Board of Appeals. He thought that it would be difficult to grant a lesser variance for this specific setback requirement given the fact that there is an existing home on an existing lot. The daycare operation does not compromise the health, safety and general welfare of the public. The lot is larger than a standard size lot. The business has operated since 2004 without incident or complaint and it is not on a heavily trafficked street.

Schafer stated that the Zoning Board should ask Council to look into updating the Zoning Ordinance as it applies to daycare operations in the Village.

Donnelly commented that some noise is endemic to this type of operation. The adjacent neighbor who is most impacted has no complaints, and there have been no complaints received by the Village in the six years the daycare has been in operation.

Brady thought that this property was unique due to the fact that it is located across the street from a school; noise from kids playing is not unusual for that area. He added that is it a good thing for working members of the community to have a daycare in close proximity.

Roll Call Vote:

Donnelly	- yes
Francis	- yes
Meah	- yes
Rass	- yes
Schafer	- yes
Tillman	- yes
Verdi-Hus	- yes
Berwick	- no
Brady	- yes

Motion passed (8 – 1).

**PUBLIC COMMENTS**

Heather Durren thanked the Zoning Board for approving her request for variance.

**ZONING BOARD COMMENTS**

Tillman commented further on the deficiency of the Zoning Ordinance as it applies to an in-home daycare operation. Wilson said that he will consult with the Village Attorney and planning consultant with regard to updating the ordinance.

Schafer brought up the case heard at the September meeting involving a front yard variance for the Taco Bell restaurant on Southfield Road. Members reviewed some of the specifics of the case and the decision rendered by the Board. The Southfield Road Corridor redevelopment plan under consideration by the Planning Board was discussed with respect to future building and parking design of the business district. Tillman said that one of the goals of the corridor plan was to locate businesses closer to the road with parking behind. Wilson stated that the Planning Board is meeting on November 10 and on December 8 to discuss preferred architectural design ideas for the Southfield Road corridor.

Schafer said that Taco Bell still may need a parking variance. If Taco Bell comes before the Zoning Board again, Schafer would request guidance from the Planning Board regarding the Southfield Road corridor plan in order to consider future planning in the Zoning Board's review of a redevelopment proposal for the Taco Bell site.

**MANAGER’S COMMENTS**

There were no petitions filed with the Village; the Zoning Board will not meet in December.

Motion by Brady, second by Tillman, to adjourn the meeting at 8:35 p.m.

Motion passed (9 – 0).

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

**Ellen E. Marshall  
Village Clerk**

**Susan Bernard  
Recording Secretary**