

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

Absent: None

Also Present: Village Manager, Wilson  
Council Liaison, LaFerriere  
Alternate member, Freier

Chairperson Schafer called the meeting to order at 7:35 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road.

**APPROVE MINUTES OF ZONING BOARD MEETING HELD APRIL 11, 2011**

Motion by Tillman, second by Verdi-Hus, that the minutes of the regular Zoning Board of Appeals meeting held on April 11, 2011 be approved as submitted.

Motion passed (9 – 0).

Chairperson Schafer described the function of the Zoning Board of Appeals and outlined the basis for its decision making authority.

Donnelly entered the meeting. Francis asked to recuse herself from hearing Case No. 1232 because she is a member of the Beverly Hills Community Garden. Alternate member Edna Freier was seated at the table.

**CASE NO. 1232**

**Petitioner/Property:** Beverly Hills Community Garden/United Methodist Church  
20000 West Thirteen Mile Road

**Village Ordinance 22.08.150 Fence Regulations:** No fence shall be erected... until a permit has been issued; a side yard fence shall not exceed 36 inches in height; a rear yard fence shall not extend farther than the rear of the building except to enclose a side door entrance.

**Deviation requested:** Petitioner requests a variance from requirements or ordinance to:

1. Extend fence past rear of building without having to enclose a side door.
2. Allow 48 inch fence in the side yard.

Manager Wilson stated that this case involves the Beverly Hills United Methodist Church and the Beverly Hills Community Garden located on Thirteen Mile Road at Evergreen Road. A nonconforming fence has been erected surrounding a community garden on the grounds of the church. A portion of the fence is located in the side yard and is in excess of 36 inches, which is not in compliance with Ordinance No. 22.08.150 Fence Regulations. The petitioner is asking for an interpretation of the ordinance and is requesting a variance from enforcement of the ordinance as it creates peculiar or exceptional practical difficulties.

Wilson indicated that the front yard of the property has been determined to be the side facing Thirteen Mile Road. If this fence were to be located in the rear yard, it would be considered acceptable in that it is less than 48 inches tall. The Village ordinance allows a fence beginning in a rear yard to extend into the side yard for the purpose of enclosing a side door of the structure. This fence does not meet that condition.

Schafer related that the property is located in a residential district and that the Village has not raised any issue with the construction of the wood fence in question. The measurement of the fence height was clarified. The height of the support posts are 40-42 inches depending on the grade; the beams exceed the 36 inch height limitation.

Elizabeth Huseltine, representing the community garden committee, was present with the pastor of United Methodist Church Rev. David Huseltine and Trustee Kevin Dimitry. She mentioned that the applicant and garden committee chairman, Matt Roman, could not be present tonight. Huseltine provided information on the community garden noting that 90% of the people involved in the garden are from Beverly Hills. She requested a variance that would allow them to retain the current split-rail fence at a height of 42 inches in order to discourage animals and vandals.

Huseltine referred to pictures distributed to Board members and noted that most of the fence is located in the back yard of the church. The garden committee thought the fence would look better at one height without lowering the fence located in the side yard. She added that it would be an economic hardship to extend the fence to the side door of the church. Huseltine maintained that this is a unique case because there are no provisions in the Village ordinance that address a community garden. The goal is to create an environment where they can grow organic food and demonstrate to their children how food is grown.

Board members discussed the proposal. It was questioned whether the fence could be disassembled at the end of the season and reassembled in a different configuration next year. A member asked if the garden could be moved further north for future seasons. The response from a committee member was that they chose to situate the garden so it would not be close to the parking lot.

It was questioned whether the community garden group knew that a fence permit was required by the Village. Wilson responded that he spoke with Matt Roman about various aspects of the garden with the discussion focusing primarily on a sign request. Requirements in terms of fence placement were explained to Roman. Wilson believed that Roman was under the impression that the front yard was where people walked into the church, which led to confusion about the front and side lot lines. If the community garden group had applied for a permit, this situation would have been easily addressed at the time.

Berwick read a statement expressing her disappointment with the erection of a fence without a permit as well as the function and aesthetics of the existing fence. She questioned whether there were other code violations on the property in terms of the children's play area and chain link fence.

Schafer asked if the Planning Board or Council were involved with reviewing the site for the community garden. Wilson said that he contacted the Village planning consultant regarding Village codes and how they related to a garden. It was determined that this community garden was in keeping with the special use approval for the United Methodist Church property. There is nothing in the ordinance that says that a garden or landscaping is not allowed. The garden is not in violation of the ordinance; the subsequent fence does not comply with the ordinance.

Members of the Board did not think that the increased height would be a deterrent to animals as suggested by the applicant. The Zoning Board is required to grant the least possible variance. Wilson said that the fence would be in compliance if it did not extend further forward than the rear of the building. If the fence enclosed the side door, it could be in compliance depending on the interpretation of the ordinance.

In answer to an inquiry, Huseltine said that the garden group would have to remove 22' along the entire width of the garden to comply with the ordinance. Extending the garden 22' to the north would involve removing a tree and locating the garden near the parking lot. Garden members maintain that it would not look attractive to reduce the height of only the side yard fence. A member of the community garden who was involved in the construction related that reducing the fence height would be extremely difficult because the fence was erected in clay and rock. They were unable to dig the posts any deeper.

Schafer referred to the ordinance interpretation question indicated on the petition. Wilson said that the interpretation issue that arose during his conversation with Matt Roman involved the location of the front yard. It was explained that the Village interprets the front yard to be where the physical address is located, which is along 13 Mile Road in this instance. Roman had suggested that the configuration of the building was such that the front yard was on the east where people enter the building; everything west of the sanctuary would be the rear yard, in his view.

In response to a question, Schafer commented on one of the factors involved in considering a variance. A hardship or difficulty cannot be self created by the petitioner. It was questioned whether the applicant would have to come back in order to make the garden larger if the petition was granted. Schafer responded that it would depend on whether the applicant wanted to expand the garden into the side yard.

A large number of community garden members were present in the audience. The individuals assured the Board that they, along with garden committee chairman Matt Roman, were not trying to disregard any of the Village ordinances. They thought that the back of the church building was their backyard. Careful consideration was put into the fencing materials. The point was made that the garden is a use that is not addressed in the ordinance. There are no other similarly situated properties in the Village in terms of a church abutting Evergreen and Thirteen Mile Roads across the street from a high school. Because of the unique use of the land, it is not likely to set a precedent. There is practical difficulty because there is concrete under the fence posts and the garden members could not dig them deeper.

The following individuals had positive things to say about the garden including the common goal and sense of community it has generated in Beverly Hills. It has been a great partnership with the church. Members have had an opportunity to instruct children about gardening. The garden members asserted that the fence is needed and asked the Board to make an exception and grant a variance that would create a lot of good will in the community.

Cary Silcox	18250 Kirkshire
Ashley Caza	19575 Beverly Road
Sunny Wechsler	32383 Sylvan Lane
Patricia Huneke	19939 Waltham
Irene Hitz	19216 Riverside Drive
Ben Dolan	19035 Riverside Drive
Derek Miller	18171 Buckingham
Kevin Dimitry	30255 Woodhaven
Melissa Mead	17124 Birwood
Suzanne Englehart	18234 Buckingham
Meg Keydel	20410 Ronsdale
Margaret Bancroft	19661 Beverly
Carey Davis	19845 Beverly
Maureen Francis	16982 Dunblaine
Elizabeth Cook	31740 Allerton
Tom Moisesides	18488 Hillcrest
Suzanne Tennent	18520 Hillcrest
Chris Wechsler	32383 Sylvan Lane
Kelly Haenni	31503 Sleepy Hollow

Bob Walsh of 20655 Smallwood Court referred to several newspaper articles to provide some background on the community garden project in Beverly Hills. He referred to the ordinance requirements and suggested that approval of this petition would set a dangerous precedent with regard to future requests for side yard fences.

Board members commented further on the request for variance. Tillman remarked that it appears that everyone believes that the community garden is a good thing. However, the Board has to consider the impact of its decisions. She expressed concern that there may be residents with similar requests for fences in their side yards. Tillman suggested that the applicant consider asking for a lesser variance that is more consistent to what is allowed by the ordinance.

Schafer said that the Board is charged to do justice to both the petitioner and to the community. The petitioner has raised the issue that there are topographic concerns with moving the garden further to the north as well as underlying conditions of the real estate that make it difficult to dig the post holes. The garden and fence is located along two main roads. This variance is not injurious to the public health, safety and welfare. There is a question of the hardship or practical difficulty with the use of this particular property. The applicants could have placed the garden and fence in accordance with the law. There may be something that they could do to request a lesser or no variance.

Motion by Tillman, second by Verdi-Hus, that the petition for a garden fence at the Beverly Hills United Methodist Church be approved as submitted based on the fact that enforcement of the ordinance creates a peculiar or exceptional practical difficulty.

Roll Call Vote:

Tillman	- no
Verdi-Hus	- no
Freier	- no
Berwick	- no
Kelly	- yes
Donnelly	- yes
Meah	- yes
Rass	- no
Schafer	- no

Motion failed (6 – 3).

Schafer stated that the petitioner is entitled to bring a revised request before the Board that is materially different from the request denied. The petitioner has 30 days from the Board's approval of the minutes of this meeting to comply with the ordinance.

**ELECTION OF CHAIR AND VICE CHAIR**

Schafer opened the floor to nominations for the office of Zoning Board chairperson.

Schafer nominated Michele Tillman for the office of chairperson. There were no further nominations. Tillman was elected as chair by acclamation.

Schafer opened the floor for nominations for the position of vice-chairperson.

Meah nominated William Donnelly as vice-chair. Donnelly respectfully declined the nomination. Berwick nominated Todd Schafer as vice-chairperson. There were no further nominations. Schafer was elected vice-chairperson by acclamation.

**PUBLIC COMMENTS**

None

**ZONING BOARD COMMENTS**

Berwick stated that she attended the Planning and Zoning Essentials Workshop offered by Oakland County last month along with members Meah and Donnelly. It was an informative and worthwhile session.

Freier commented on the difficulty she experienced voting against granting a variance for the community garden fence. She was concerned that approval could lead to other similar requests.

**MANAGER COMMENTS**

Wilson reported that the Taco Bell building is expected to reopen on August 15. The Market Fresh renovations will be completed in September. Wilson will copy and forward information from the Planning and Zoning Essentials Workshop to all Board members.

Schafer asked Wilson about the possibility of losing another fast food franchise in the Village. There followed discussion on the status of the McDonald's restaurant.

Motion by Tillman, second by Meah, to adjourn the meeting at 9:28 p.m.

Motion passed (9 – 0).

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

**Ellen E. Marshall  
Village Clerk**

**Susan Bernard  
Recording Secretary**