

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

Absent: Rass

Also Present: Village Manager, Wilson  
Council Liaison, LaFerriere

Chairperson Tillman 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 OCTOBER 11, 2011**

A correction was made on page one under “Public Comments, first paragraph, line two, to change the word ‘replace’ to ‘supplement’.

Motion by Meah, second by Schafer, that the minutes of the regular Zoning Board of Appeals meeting held on October 11, 2011 be approved as amended.

Motion passed (9 – 0).

**CASE NO. 1233**

**Petitioner/Property:** Sharon Ulep  
15980 Dunblaine

**Village Ordinance: 22.08.150 Fence, Wall and Privacy Screen Regulations**

A fence in a rear yard shall not exceed 48 inches in height above grade....

If more than 25% of the area of any side of a fence, wall or privacy screen requires reconstruction in any 12 month period, the entire fence, wall or privacy screen shall be brought into compliance with this ordinance.

**Deviation requested:** Petitioner requests to grandfather the current rear yard 6 foot fence that has been in place for a minimum of 25 years. The fence has been repaired and sections replaced within Village ordinance requirements.

Manager Wilson stated that the house is located on a triple lot at the corner of Madison and Dunblaine. He displayed a mortgage survey drawing of the house on the lot and pointed out the location of the existing fence. A photograph was shown of the house from different angles and the various sections of fence. The fence facing Madison is 6 ft. high tapering down to a 4 ft. high split rail fence. There is a 6 ft. high fence along the entire back lot line.

The petitioner has indicated that the fence was in existence for over 25 years and that it was rebuilt over an 8 month period in various sections according to the Village code. The Village ordinance states that a non-conforming fence can be replaced if more than 25% of the area of any side of a fence is not reconstructed in any 12 month period. If the homeowner replaces more than 25% of the fence in a 12 month period, that fence is required to be brought into compliance with

Village code. A permit is required if a homeowner replaces more than 25% of an existing fence; there was no permit issued for this fence.

An issue that was not included in the petition was the fact that the fencing on the back lot line is oriented incorrectly according to the ordinance. The finished side of a fence is required to face outward. This could be added to the variance request at the petitioner's discretion.

Chairperson Tillman provided information on standards that a petitioner must demonstrate to establish that a practical difficulty exists under Michigan Law that is sufficient to warrant relief by granting of a dimensional variance by the Zoning Board of Appeals. Five affirmative votes of the Board are necessary to grant a variance. Tillman outlined the process followed to hear a case before the Board.

Daniel and Sharon Ulep presented their petition to the Board. The 6 ft. fence was existing at the time they purchased the property in 1998 with a 4 ft. split rail fence at the front. Their house is one of the oldest in the Greenfield-Beverly area established in 1947. Sharon Ulep related that the fence was old enough that they had to make repairs annually to keep the fence from falling over. After living in the home 10 years, they started work last year to replace portions of the fence. The fencing was replaced in sections beginning with the side sections, but the entire back fence was replaced last summer.

Sharon Ulep acknowledged that the back portion was more than 25% of the entire fence. The homeowners did not want to inconvenience their neighbors to the rear by replacing the fence in 25% sections. The Uleps consulted with their neighbors, who had no objections to replacing the worn fence. The neighbors suggested that the fence be installed so that the finished side faced inward. Ulep submitted a letter from Michael and Carrie McDonald indicating their support of replacing the fence on the basis that the petitioner was acting with the neighborhood's best interest in mind. The petitioners asked that the Board grandfather the fence height and allow the fence to remain in its current orientation.

Ulep related that their property abuts the back yard of three neighbors because they have a triple lot. A hardship exists due to an extremely unsightly condition of the middle neighbor's back yard. Taking the 6 ft. fence down to a 4 foot level would result in the Ulep's looking into the problem back yard. Wilson affirmed that the Village has had code enforcement issues with the referenced home on Buckingham. The property becomes unsightly from time to time.

Tillman clarified that the applicant has amended their petition to include a variance to allow the more finished side of the fence to face the interior of the lot. A variance is also required from the ordinance section stating that a residential fence must be 35% open to air and light. Sharon Ulep stated that she will amend her fence petition to include these items.

Tillman asked if a lesser variance would be acceptable. Ulep did not think a 4 foot fence would provide the necessary screening to shield their two-story home from the offending property to the rear. She added that the other neighbors to the rear want the 6 ft. fence to remain. One of her neighbors has two large dogs. Ulep emphasized that she did not realize that it would be an issue to replace a fence that has existed for 25 years.

Schafer stated that the Beverly Hills fence ordinance was revised by the Village Council in 1999 to reflect what should be permitted to retain the character of the community. While nonconforming fences are allowed to remain, the ordinance is drafted in a way that does not allow illegal fences to be replaced. Schafer commented that this is a body of limited powers; the petitioner is asking the Board to change the law in their favor. The Zoning Board is primarily allowed to consider factors related to real estate such as the layout of the house on the lot and not personal use issues. The Board considers exceptional practical difficulties or hardships.

Ulep questioned what could have been done other than replacing the existing fence. She assumed that it was the responsibility of the homeowners to replace a fence that was existing when it reached a state of disrepair. Schafer responded that other options would be to create screening with trees and shrubs. The petitioner has the option of erecting a 6 ft. privacy screen to obscure the view of unsightly property. Village residents can ask Council to change the law if they have a problem with an ordinance that says that 6 ft. fences are not allowed.

Schafer attempted to determine if there was a lesser variance that would be acceptable to the applicants. He asked if the petitioners were amenable to reducing the height of the fence to four feet. Ulep thought that reducing the fence height would not look as good. Another concern was that she did not want to come forward with a complaint against her neighbor. Ulep related that the homeowners on either side of the unsightly property were allowed to have 6 foot fences.

**Decision:** Motion by Schafer, second by Donnelly, to grant variances from the fence ordinance with respect to fence height, fence orientation, and the fact that the vertical surface is not 35% open to air and light on the grounds that the replacement of an existing fence causes no particular hardship to the community and represents a beautification of the area in terms of replacing an eyesore.

Roll Call Vote:

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

Motion fails (8 – 1).

Mrs. Ulep expressed disappointment and indicated that she and her husband tried to do the right thing for the neighborhood. She mentioned that they spent \$4500 to improve the fence.

Tillman urged the petitioners to contact Manager Wilson to discuss options to utilize the existing materials to come into compliance with the ordinance. There may be alternatives to consider.

**CASE NO. 1234**

**Petitioner/Property:** Michael Nehra  
1 Stone House Lane

**Village Ordinance: 22.08.150 Fence, Wall and Privacy Screen Regulations**

A fence in the front yard shall not exceed 36 inches in height above grade and shall not extend back toward the front of the principal building more than eight feet.

**Deviation requested:** Due to the configuration of the house, the petitioner requests to erect a 4 foot fence in the front yard facing a main street (Lahser Road).

Wilson displayed photographs of the property. The house is accessed from a road called Stone House Lane that was included as part of Westwood Common, which is entered from Lahser Road. The house was originally accessed off Lahser Road prior to the development of Westwood Common. The lot is deep and peculiarly shaped with the river running through the rear of the lot. The homeowner is requesting to fence in the front section of the house that faces Lahser Road. There is a green buffer screening Lahser Road from the house.

The petitioner Michael Nehra stated that he has a child and two dogs and is concerned about the safety hazards related to living along Lahser Road where there is 55 MPH traffic. It is not feasible to locate a fence in the rear yard due to the slope of the land down to the river. Nehra proposed to erect a 4 ft. black wrought iron fence in the front yard to provide an enclosed and safe area for his child. The fence would be hidden by the trees and shrubbery along Lahser Road. The neighbors have no objections to the proposed fence.

Board members had questions and comments regarding the petition. There was some discussion about the orientation of the neighbors' lots. It was suggested that, if a variance were to be granted to allow a front yard fence, it should be conditioned on there not being access to the property from Lahser Road. Nehra agreed that the fence would have to go if there was a driveway from Lahser Road.

Alternate Zoning Board member Sharon Fox provided background on the Westwood Common development and the ordinance amendment to allow decorative 36" high front yard fences in the Village. She believed that the petitioner would be prohibited from accessing Lahser Road based on the site plan approved for the Westwood Common cluster development.

Wilson observed that the survey drawing shows a 60 ft. right-of-way on Lahser. He suggested that approval of a variance be contingent upon identifying the Lahser Road right-of-way so that the fence is not constructed in that right-of-way.

Bob Walsh on Smallwood Court commented that the Village ordinance states: "A fence in the front yard shall not exceed 36 inches in height above grade and shall not extend back toward the front of the principal building more than eight feet...." He said that an enclosed fence is not allowed in a front yard. Walsh questioned the hardship mentioned by the property owner because

the safety issues related to Lahser Road were evident when the property was purchased by the petitioner.

Schafer stated that granting of this variance would have to specify that extension of the fencing towards the principal building would be allowed to be more than 8 feet. Schafer concurred that the property presents unique topographical concerns. Challenges are presented by the orientation of the house and its placement in connection with the rest of the subdivision with regard to properties on the north where a rear yard faces a side yard.

**Decision:** Motion by Schafer, second by Meah, that the request for a variance be granted to allow a 4 ft. high black aluminum wrought iron style fence located in the site plan front yard oriented towards Lahser Road and extending back as evidenced on the site plan drawing along the side yards on the north and south side of the property. The petition is granted on the basis of the location of the house on the property, the topographical conditions of the rear yard, and the fact that the property abuts one of the most dangerous streets in the community. Granting of the variance is conditioned on the fence in the front yard not being located in the Lahser Road right-of-way.

Roll Call Vote:

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

Motion passed (7 – 2).

**PUBLIC COMMENTS**

Bob Walsh of 20655 Smallwood Court questioned the status of the variance request from the Beverly Hills Community Garden.

Tillman responded that Matt Roman representing the Community Garden was in communication with Village Attorney Tom Ryan. They reached a determination regarding how to bring the fence surrounding the garden into compliance with the ordinance. The solution involved the enclosure of the side door of the building facing Evergreen Road. It is the interpretation of Mr. Ryan that this would bring the fence in compliance with the Village ordinance. A permit for a fence permit was submitted and approved.

Wilson will have the Village's code enforcement officer check on whether the work has been completed. He noted that the issue regarding fence materials was deferred to Mr. Ryan.

**ZONING BOARD COMMENTS**

Berwick had an inquiry about a tent-like structure covering a sports car at the property located on 1 Stone House Lane. Wilson will have the code enforcement officer investigate the structure.

Mueller asked if there was notification in the annual Village calendar regarding the importance of homeowners pulling permits to erect fences. Wilson responded that there are regular articles on the permit process in the Village calendar and in the quarterly newsletters.

**MANAGER COMMENTS**

Wilson addressed questions and comments from the Board related to code enforcement and work done without a permit. A future arrangement with the City of Birmingham for building, mechanical, plumbing and electrical permits and inspections was discussed. It was noted that items such as code enforcement, sign permits, and rental inspections will not be a part of that contract.

Motion by Schafer, second by Meah, to adjourn the meeting at 8:54 p.m.

Motion passed (9 – 0).

**Michele Tillman, Chairperson**  
**Zoning Board of Appeals**

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

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