

Present: Vice-Chairperson Schafer; Members: Berwick, Donnelly, Fox, Freier (alternate), Kelly, Mueller and Verdi-Hus

Absent: Tillman and Rass

Also Present: Village Manager, Wilson

Vice-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 MARCH 12, 2012

There were two changes to the March 12, 2012 meeting minutes. On page 2, second paragraph beginning “In response to an inquiry”, add a sentence as follows: “Fox thought that it was inappropriate to amend the petition at this meeting to add a tent request for the reason that a separate section of the ordinance was involved.”

On page 3, Case No. 1236, add the following to the last paragraph before the motion: “Mr. Karmo indicated that he and the Starbucks manager had not worked out which business would use the area underneath the roof on the east side of the building north of the Starbucks door and which would use the area outside further east.”

Motion by Mueller, second by Donnelly, that the minutes of the regular Zoning Board of Appeals meeting held on March 12, 2012 be approved as amended.

Motion passed (8 – 0).

CASE NO. 1237

Petitioner/Property: Robert Sarver
18837 Saxon Drive
24-02-201-006

Village Ordinance: **Section 22.24...Zoning districts:** R2-B single family residential required minimum 40 ft. rear yard setback and minimum 5 ft. (one) and 10 ft. (other) side yard setbacks.

Deviation requested: Petitioner requests a deviation of 6 ft. in the rear yard setback to 34 ft. and a variance of 4 inches in the side yard setback to 9.7 ft. to build a 500 sq. ft. family room/powder room addition.

Manager Wilson stated that the petitioner is requesting two variances, but it will be within the discretion of the Zoning Board to determine what is required in terms of variances. Wilson referred to the site plan illustrating the existing structure on the lot. He pointed out the original home and an addition that was constructed after a variance was granted by the ZBA in 1999. The addition encroached into the required rear yard open space by about 6 feet. The petitioners are now requesting another addition on the east side of the house. Wilson pointed out the portion that would be new construction and the area that would be a covered patio.

The applicant originally assumed that a variance would not be required because the 1999 Zoning Board decision allowed an addition on the west side of the house to encroach on the rear yard open space. The applicant was informed that a permit for the addition could not be issued without review by the Zoning Board of Appeals. Wilson asked LSL Planning to provide a review letter on this case.

A review letter dated March 2, 2012 from LSL Planning, Inc. confirms that the 1999 variance was specific to the project at that time and did not allow the owners to expand the residence along the same line in the future. A new variance is required to encroach into the 40 ft. rear setback in order to build an addition on the other side of the house.

The letter from LSL Planning referred to another issue. There is a required 10 ft. side yard setback on the east side of the house; the site plan shows that there is currently a 9.7 ft. setback. The side yard setback shown for the proposed addition matches that of the existing residence, which is a nonconforming condition. The issue is what is meant by the term “more nonconforming”.

Section 22.30.040(a) states that “such structures may be enlarged or altered in a way that does not increase nonconformity”. This can be interpreted two ways. “More nonconforming” could mean that they are not allowed to build any closer to the lot line than 9.7 ft.; an addition would be allowable if they built along that same line of the house and met all other requirements. “More nonconforming” could also refer to the fact that the addition would extend the size of the building along that line, make the house more nonconforming, and require a variance.

LSL was unclear about how the Village has historically interpreted this regulation and suggested that the issue be brought before the ZBA for a formal interpretation. Wilson stated that it is clear that a variance would need to be issued to allow further encroachment into the rear yard open space. He brought the side yard issue to the Board’s attention for their review and input.

Schafer suggested that the Board address the ordinance interpretation question before the variance requests. He confirmed that there is an historical approach by the Village whereby a further expansion of an encroachment has always been dealt with as a variance request. The Zoning Board of Appeals has consistently heard cases involving additions that continued the existing line of the house. Schafer believed that two variance requests are needed based on the plan submitted.

Schafer described the role and responsibilities of the Zoning Board of Appeals for the benefit of those present. He outlined the standards required to establish that a practical difficulty exists under Michigan Law that is sufficient to warrant relief by granting of a dimensional variance by the Board.

The petitioner Robert Sarver stated that he and his wife have notified the neighbors to the west and south of their plans for an addition. He submitted documentation indicating that there were no objections from Christine Ward of 32851 Wentworth or Mr. & Mrs. Mark Wayne of 18861 Saxon. Sarver said that he was not able to contact his neighbor to the east.

Sarver related that the main purpose of the addition was to accommodate his father-in-law, who will be coming to live with their family. He pointed out that a shaded area shown on the site plan represents a patio that they intend to cover. The roof will be extended over the patio and the area will be screened. Sarver will be the contractor for the project.

Questions from the Board were addressed by the petitioner. There was concern expressed with the size of the building in relationship to the lot size. The backyard size will be 34 ft. x 90 ft. Wilson remarked that the Village has no lot coverage requirements.

The applicant was asked to elaborate on any practical difficulties or undue hardship associated with this petition. Sarver stated a fourth bedroom is needed to accommodate his father-in-law. Constructing a second story for this additional space would be cost prohibitive. The current size of the house is 2200 square feet. Sarver referred to the floor plan to demonstrate that he could not provide the space needed for handicapped access rooms without a rear yard variance. He displayed the construction plans and described an issue with engineering the roof lines, which is why the roof is extended over patio to create a screened area.

Board members considered the rationale for granting a variance based on what the petitioner has presented. It was thought that there may be practical solutions available that would satisfy the need for additional space without encroaching further into the rear yard open space. There were no objections voiced to continuing with the existing line of the house on the east side.

Schafer entertained a motion with regard to interpreting the ordinance relative to requiring a variance for continuing the existing line of the house on the eastern side.

Motion by Kelly, second by Fox, that it is the interpretation of the Zoning Board of Appeals with respect to this case that the language of Ordinance Section 22.30.040(a) indicates that a nonconformity cannot be increased. The petitioner's request to build in line with the current eastern line of the house would require a variance.

Roll Call Vote:
Motion passed (8 – 0).

Before the Zoning Board for consideration are two variances needed to construct the addition on the plans submitted by the petitioner: A variance to allow a 34 ft. rear setback in lieu of the 40 ft. requirement and a variance to build the structure as shown in line with the existing house on the eastern property line with a setback of 9.7 ft. in lieu of the required 10 feet.

Decision: Motion by Fox, second by Freier, to approve the variance request to continue the existing side yard nonconformity due to the exceptional practical difficulty of deviating from the existing line of the house, noting that all other setback requirements must be maintained.

Roll Call Vote:
Motion passed (8 – 0).

Motion by Donnelly, second by Mueller, to grant a variance to allow a 34 ft. rear yard setback in lieu of the required 40 ft. to construct an addition based on a hardship relative to engineering issues associated with the plans and the cost of constructing a second floor addition.

Mueller stated that he heard comments from the petitioner that indicated that there is a hardship involved in terms of providing space for a handicapped individual as well as construction challenges in terms of roof lines and valleys. He thought that there was enough hardship demonstrated in this case to grant a variance. A few questions from Board members were addressed by the petitioner.

Roll Call Vote:

Schafer	- no
Verdi-Hus	- no
Freier	- yes
Fox	- no
Berwick	- no
Donnelly	- yes
Kelly	- no
Mueller	- yes

Motion failed (5 – 3).

PUBLIC COMMENTS

John Lisiecki, new resident of Beverly Hills, was present to observe a Zoning Board meeting. He was a member of a zoning board about ten years ago and has submitted an application to serve on the Village Zoning Board of Appeals.

MANAGER COMMENTS

None

ZONING BOARD COMMENTS

Kathleen Berwick raised an issue related to the Zoning Board denying a variance request for a fence erected by the Beverly Hills Community Garden on Beverly Hills United Methodist Church property. The topic was discussed at a Council meeting at which time it was stated that modifications were made to the fence, which involved enclosure of the side door of the church building facing Evergreen Road.

Schafer remarked that the Village Manager, Village Attorney and some members of the Zoning Board believe that the ordinance has been interpreted correctly and the resolution to extend the fence to enclose a side door has brought the fence in compliance with the ordinance. This body made a decision, and it was his opinion that the decision was respected. The Community Garden had an option to modify the fence, which they did. Schafer added that the matter is beyond the purview of the Zoning Board at this time.

Berwick agreed with Wilson that the church fronts Thirteen Mile Road, resulting in Evergreen Road facing the side of the property. Wilson concluded that the door on the Evergreen side of the building is in the side yard.

Mueller thought that there was a need to communicate to residents that permits are needed for residential construction. The community should be reminded that permits are required when citizens engage in construction projects of any kind. The Zoning Board recommended that the Village communicate regularly with its residents about the need for a permit.

Motion by Fox, second by Kelly, to adjourn the meeting at 8:27 p.m.

Motion passed (8 – 0).

**Todd Schafer, Vice-Chair
Zoning Board of Appeals**

**Ellen E. Marshall
Village Clerk**

**Susan Bernard
Recording Secretary**