

Present: Chairperson Tillman; Vice-Chair Schafer; Members: Delaney, Mueller and Rass

Absent: Donnelly, Eifred, Fox, Verdi-Hus

Also Present: Village Manager, Wilson

Chairperson Tillman called the meeting to order at 7:30 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road.

Chairperson Tillman stated that there are five members of the nine member body present tonight. Approval of a non-use or dimensional variance would require the affirmative vote of all five members. The petitioners have the option of postponing their hearing until the next meeting when a full compliment of the Board may be present.

Petitioner Daniel Ulep indicated that he wished to proceed with presenting his case and entertaining questions and comments from members. He may choose to table his case prior to a vote of the Board. The next ZBA meeting is scheduled for February 11, 2013.

CASE NO. 1241

Petitioner/Property: Daniel Ulep
15980 Dunblaine

Village Ordinance: 22.08.150 Fence, Wall and Privacy Screen Regulations

B.1. Fences: Fences with a vertical surface area that is at least 35% open to air and light (see Section 22.04 "Point of Observation") are permitted subject to the following:

B.1.c. Rear Yard: A fence in a rear yard shall not exceed 48 inches in height above grade and shall not extend toward the front of the lot farther than the rear of the house,.....

Deviation requested: Petitioner requests to obtain a variance from requirements of Ordinance 22.08.150: Allow 6 ft. fence; utilize shadow box slats.

Manager Wilson stated that this is a rehearing of a variance request that was previously heard by the Zoning Board of Appeals and denied on November 14, 2011. There was a ticket issued on this case that proceeded to court. A court hearing has been scheduled on this matter, but has been held in abeyance pending the outcome of the property owner's new petition to the Zoning Board of Appeals. The petitioner has resubmitted a request for variance with some differences. Daniel Ulep will state his case using a slide presentation.

Delaney asked that a copy of the November 14, 2011 Zoning Board meeting minutes be provided to Board members prior to the February meeting.

Homeowner Daniel Ulep stated that, when the house was purchased in 1997, there was an existing fence along the rear of the property and halfway up the sides of the lot. The fence was 6 ft. high for most of the length tapering down along the sides. The property owners repaired some of the posts from 1998-2008 due to drainage issues that caused deterioration of the fence.

Ulep related that the fence is needed due to lot and house placement issues. The home is an older structure and sits further back on the lot than some of the surrounding homes. The home is on a slab and is lower than adjacent lots. Windows along the back of the house allow for easy viewing into the home from properties to the rear. The fence has existed for more than 35 years; removal would cause disturbance to homeowners on both sides of the fence.

Ulep displayed a drawing of the lot and the fence. The rear yard fence is 6 ft. high; the side portions of the fence taper down going towards the house. Ulep reviewed the timeline for repair of the fence. Decaying stringers and posts were repaired and/or replaced on the northeast and northwest sides of the fence in 2009 and 2010. The back side of the fence was repaired in a similar manner in 2011. All three affected adjacent neighbors were contacted prior to the work; some offered physical and financial assistance on the project.

The Village became aware of work done on the fence in 2011 and issued a ticket to the Uleps for failure to obtain a permit for fence repair and for a non-conforming fence. The fence was greater than the allowed 48” and the stringers on the back lot line were oriented incorrectly according to the ordinance. The finished side of a fence is required to face outward.

Ulep related that he had contacted the Village building official about the need for a permit for fence repair. He was told that, according to the Village ordinance, repairs/replacement up to 25% or less of a fence did not require a permit. The homeowners repaired three sections of the fence over a three-year period. Ulep learned later that 25% refers to each side of the fence rather than the entire fence. Maintaining the fence was an effort to be good neighbors.

Ulep stated that they are willing to acknowledge the error of not obtaining a fence permit and will pay permit costs if an arrangement can be reached with the Zoning Board to maintain the fence. As part of their proposal, the Uleps would change the fence to reverse all stringers so that the finished side faces out. The Uleps asked for approval from the Zoning Board to retain the 6 ft. fence height along the rear lot line.

Board members had questions and comments on the proposal. The option of providing screening on the lot line with trees and shrubs was explored with the petitioner. It was noted that there is nothing planted for most of the distance along the back lot line. Privacy issues and the location of the existing deck and window wall were addressed.

Delaney noted that an adjoining neighbor residing at 15825 Buckingham has asked that the fence be allowed on the basis that it would provide her with privacy. The Ulep property abuts the back yard of three neighbors because they have a triple lot. Delaney questioned whether the neighbor at 15843 Buckingham had been contacted. Ulep responded that he has not heard from that neighbor. It was indicated that there has been an ongoing aesthetic issue concerning the back yard of the second abutting property owner. Wilson affirmed that the state of the property referenced on Buckingham has been an ongoing issue with the Village code enforcement officer. Ulep related that the third abutting neighbor is fully supportive of the 6 ft. fence.

Tillman questioned why the petitioner’s property is unique and warrants a change from the municipal code. Ulep stated that their house sits further back on the lot than other homes on the street. Because the house was one of the first structures built on the block, the grade of the

property is lower than surrounding lots. The lower grade and resulting angle makes it easier for neighbors to look into their rear windows.

Tillman asked how this request differs from the last request. Ulep indicated that he provided additional information in the presentation for this hearing and has suggesting improvements to the fence. The Uleps will show the Board that they are willing to convert the fence slats to a shadow-box effect (2 slats out, 1 slat in) to increase light and open air effect to 35 percent. They will reverse the stringers into the approved position.

Schafer commented on the items that are appropriate for Board consideration. Board members need to hear a reason why they should change the law for this petitioner. Consideration will be given to whether the petitioner has requested the least amount of variance needed to accomplish his purposes. Some members may suggest alternatives that might afford privacy to the residents in terms of landscaping. It was questioned whether the 6 ft. fence needs to extend across the entire back yard. Schafer conceded that there is a grade change issue that may have relevance.

Schafer appreciated that the homeowner expects to keep what he has. A fence of this type is a legal nonconforming use until it is replaced. The Board will consider whether others in this neighborhood have similar fences, particularly if they have been approved by the Village. One of the standards of approval is to determine if the request is doing justice and is fair to the rest of the community.

Mueller expressed concern about the communication that took place between the homeowners and the Village building official and the resulting confusion regarding replacement of their fence.

Tillman informed the applicant that he can choose to postpone a vote on this case until a full component of the Board is present. Ulep asked to table his petition before the Board until the next meeting. He mentioned that he has a court date on Friday, January 18 resulting from the ticket. Wilson responded that he will contact the Village attorney relative to adjourning the court date for the reason that this case will be heard at the February 11, 2013 Zoning Board meeting.

Ulep commented that the ticket would require him to remove the fence completely. The Uleps would like to leave the fence in place even if it means taking it down to a four foot height.

Case No. 1242

Petitioner/Property: Melvadean & Frederick Pearson
30425 Stellamar

Village Ordinance: 22.08.150 Fence, Wall and Privacy Screen Regulations

B.1. Fences: Fences with a vertical surface area that is at least 35% open to air and light (see Section 22.04 "Point of Observation") are permitted subject to the following:

B.1.c. Rear Yard: A fence in a rear yard shall not exceed 48 inches in height above grade and shall not extend toward the front of the lot farther than the rear of the house, except when a house has a commonly and consistently used side door entrance rather than a rear door entrance, then a fence may extend into the side yard only to enclose the side door entrance.

Deviation requested: To obtain a variance from requirements of Ordinance No. 22.08.150; Allow 4-ft. decorative split rail fence in side yard.

Wilson disclosed that he knows Dr. Frederic Pearson, who is a professor at Wayne State University. Wilson displayed photographs of the property and indicated, with the help of the petitioner, where a 4-ft. split rail decorative fence is proposed to be located. He pointed out the house to the north. Drawings have also been submitted with the petition. Wilson remarked that there is a drainage ditch on the property, and there have been erosion issues.

Mrs. Pearson stated that they would like to install a decorative split rail fence on the property in order to improve the look of the drainage ditch, which she described as an eyesore. She displayed a lot survey drawing to point out the front of the property and the location of the fence. Invasive plants such as buckthorn are removed and treated on an ongoing basis. Plantings and strategically placed large rocks would be installed to prevent erosion of the area. Native plants in accordance with the ecosystem will be used. She proposed installing 14 posts with 10 ft. rails. The fence will serve as a backdrop for the plants. The petitioner and her landscape designer will proceed with the project following approval of the fence.

Tillman asked why a 3 ft. fence couldn't be used. The petitioner referenced the spacing of the rails and indicated that she wanted to have the fence higher to better define the plantings.

A variance is required for the portion of the fence in the side yard extending forward from the rear of the house and the portion of the fence extending into the front yard. According to the lot survey, there is 10 feet along the property line that appears to be encumbered by a sanitary sewer easement. That is the area where the fence is proposed. This may or may not be permissible depending on the wording of the document.

The Board does not grant variances on property within an easement unless evidence is submitted that the easement holder approves. Granting of a variance would be conditioned on it meeting the terms of the easement or permission of the easement holder. Schafer suggested that the petitioner may want to consult with an attorney to assist with contacting the appropriate individual about the sanitary sewer easement.

Pearson requests a variance to erect a decorative fence on her property. It would define the property line and would benefit both properties to have a fence and plantings along the creek. She proposes to install native plants and place stones in the area to prevent erosion.

Delaney asked if petitioner has discussed the fence proposal with her neighbor to the north. Pearson responded that she and that neighbor do not communicate, but added that there is no property dispute involved.

Wilson stated that he received an anonymous email from an individual who indicated that he/she would not attend the meeting but asked that his/her comment be read into the record. The individual requested that the Board refrain from granting a deviation to allow a 4 ft. decorative split rail fence in the side yard on the basis that they did not want to establish a precedent in the neighborhood.

Tillman informed the petitioner that she would have to receive an affirmative vote from all five members present in order to be granted a variance. Mrs. Pearson asked to postpone a decision on her case due to the lack of a full component of the Zoning Board. She will be in contact with the County Water Resources Commissioner's office regarding the sewer easement.

Tillman stated that public comments will not be entertained at this time for the reason that the request has been tabled. This case will be presented at an upcoming meeting of the Zoning Board of Appeals at which time public comments will be heard. If an interested individual cannot attend the meeting, a letter can be mailed to the Village and will be read into the record.

PUBLIC COMMENTS

Semon Kopyrin of 30475 Stellamar stated that he was the neighbor who lives directly to the north of the petitioner in Case No. 1242. He commented that a negative consequence of the proposed fence is that it would be partially submerged and would create turbulence and erosion. Kopyrin talked about the sewer easement and indicated that he did not like the look of the fence.

ZONING BOARD COMMENTS

Tillman welcomed David Eifred, who was appointed to the Zoning Board at the December 18, 2012 Council meeting. Tillman stated that there are two openings for positions of alternate member of the Zoning Board of Appeals.

MANAGER COMMENTS

Wilson informed the Board about an issue he has discussed with the Village planning consultant from LSL Planning, Inc. A resident with a rental property on 14 Mile Road has been cited for vehicles in the front yard. The individual has inquired into installing a circle drive on his property. Wilson has asked the planning consultant for an opinion on how to proceed when a person wants to hard surface a portion of their front yard to use for parking. The Village Ordinance says that parking is not permitted in the front open space; circle drives are almost by definition in the front open space. Wilson will keep the Zoning Board informed with regard to this matter and whether it will become an ordinance interpretation issue.

Motion by Mueller, second by Delaney, to adjourn the meeting at 8:50 p.m.

Motion passed.

Michele Tillman, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary