

Present: Chairperson Tillman; Members: Delaney, Donnelly, Eifrid, Fox, Grinnan, Raeder, and Rass

Absent: Mueller, Schafer and 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.

APPROVE MINUTES OF ZONING BOARD MEETING HELD AUGUST 12, 2013

Motion by Grinnan, second by Delaney, that the minutes of the regular Zoning Board of Appeals meeting held on August 12, 2013 be approved as submitted.

Motion passed.

CASE NO. 1254

Petitioner/Property: Michael Casey
32346 Arlington
24-01-278-006

Village Fence Ordinance: 22.08: “Fence in rear yard shall not exceed 48 in. in height and shall be 35 percent open to air and light.”

Deviation requested: The petitioner requests to install 6-ft. shadow board fence in rear yard, not extending to side yards.

This case was tabled at the August 12, 2013 Zoning Board meeting in order to receive a report from Village Administration summarizing complaints and violations issued to the abutting property owner at 32255 Auburn. The petitioner’s wife, Alise Casey was in attendance to present their case. The request is for a variance from the ordinance to erect a 6 ft. shadow board fence along the rear property line only. Photographs of the property were reviewed at the last meeting and were available on the display board.

Manager Wilson recalled that there were issues discussed at last month’s meeting regarding code enforcement on the neighboring property to the rear. Members are in receipt of a sheet listing the code enforcement history for 32244 Auburn. This report does not include Public Safety Department complaints.

The code enforcement issues that the Village has dealt with on that property during the last four years include complaints regarding piles of wood on the driveway and front lawn, large piles of wood chips, cleanup from dogs, problems with rats, and illegal burning. Wilson has not seen evidence of more than two dogs, but the code enforcement officer has been advised to keep an eye out for multiple dogs on the site.

The petitioner Alise Casey stated that the primary motivation for requesting a 6 ft. fence was for safety. She has seen five to seven dogs on the property abutting their lot. The dogs jump over the existing fence onto their property. The goal is to install a higher fence that would prevent dogs from coming into their yard. There is also an issue with rats due to wood storage and dog feces on the neighbor's property.

The case was tabled to give the Village an opportunity to investigate the code enforcement history on the neighbor's property. Casey noted that a list of complaints to the public safety department and violations issued was not included in the report. There have been numerous calls from area residents regarding the dogs, bonfires, wood piles, and rats. Casey maintains that there are unique circumstance related to the neighbor to the rear who has resided there for a number of years. Alise and Michael Casey are requesting a sustainable, permanent option to address a safety issue in the community.

Board members discussed this case and the enforcement history on the abutting property. Wilson mentioned that the code enforcement history distributed to members does not include a list of police calls. There were members of the Board who thought that ordinance violations should be enforced by the code enforcement officer or the public safety department before resorting to granting a variance from the zoning ordinance. Concern was expressed that allowing a 6 ft. fence would set an unfavorable precedent in terms of addressing these types of issues. Action by the Village in response to complaints about trespassing dogs was questioned. Wilson responded that he does not have a criminal history of complaints regarding this property, noting that some of it is not public record. There were members who indicated that they would be in favor of allowing the 6ft. fence height considering the hardship experienced by the homeowners.

Delaney related that he visited the property and observed a difference between the grade of the Casey property and the grade of the lot to the rear. He suggested that the Caseys may be entitled to a fence that is higher than the allowed 4 ft. due to the higher grade of the neighbor's yard. There was a significant woodpile in the rear of the neighbor's property that appears to have been there for a long time. There was also a pile of wood up against the fence that dogs can use as a launching pad to jump over the fence. The Village should enforce violations pertaining to wood piles, rodent problems, and more than two dogs residing at a home.

Members were sympathetic to the health and safety issues caused by the neighboring property owner. Discussion focused on addressing the code enforcement and public safety issues in order to alleviate problems caused by the abutting property owner.

Wilson talked about the code enforcement process. In recent years, many communities in the State including Beverly Hills changed their municipal code to consider all types of code violations civil infractions rather than criminal infractions. It has worked well in 95% of the cases, but there are exceptions.

The standard process is that a civil infraction case is received and the Village issues a field corrective notice. Depending on the infraction, the individual gets 10-30 days to take care of the issue. If the problem is not dealt with, a ticket is issued, a court date is set, and the person goes before a judge. If the matter has been addressed, the issue is considered resolved. If the infraction

recurs and goes to court again, the judge can decide to issue a fine and the Village monitors the issue. Without issuing a criminal infraction, the Village does not have the right to go onto people's properties and take care of problems. There was agreement among Board members that issuing corrective notices and tickets for violation of the ordinance might put pressure on people to limit the number of dogs they own and keep their dogs contained on their property.

Mike Bilas of 32340 Arlington, adjacent neighbor to the west of the Caseys, expressed support for their proposal to erect a 6 ft. fence. He confirmed that there are at least five dogs at the property at 32244 Auburn. Bilas talked about safety issues relative to dogs that are not contained, rats caused by wood piles in the backyard, and burning of trash. He questioned how many citations it will take before the offending homeowner complies with Village ordinances.

Mr. Chambers from Detroit questioned the size of the dogs and the time frame for attempting to enforce ordinances before a variance is granted. Another man who resides on Beverly Road suggested that a civil infraction should become a criminal infraction after five incidents.

The petitioner, Alise Casey, did not wish to table the case.

Decision: Motion by Delaney, second by Raeder, to grant the variance request to allow a 6 ft. high shadow board style fence across the back yard and to allow a fence that is not 35% open to air and light. There is an exceptional and undue hardship based on reasons stated in the record, specifically referring to the code violation history of the property to the rear. Further, a 4 ft. fence does not provide adequate privacy for the reason that the topography of the lot to the rear is higher.

Roll Call Vote:

Donnelly	- no
Eifrid	- yes
Fox	- no
Rass	- no
Tillman	- no
Raeder	- yes
Grinnan	- no
Delaney	- yes

Motion fails (5 – 3).

CASE NO. 1256

Petitioner/Property: Beverly Park Condominium Association
18000 Beverly Road
24-01-157-024

Village Zoning Ordinance 22.08: Fence in rear yard shall not exceed 48 inches in height and shall be 35 percent open to air and light.

Deviation requested: The petitioner is requesting a 6 ft. high rear yard fence.

Marianne Von Habsburg-Lothringen of 18000 Beverly stated that she lives in one of four condo units on Beverly Road. The request is to erect one 12 ft. section of 6 ft. high white vinyl fencing at 18000 Beverly Road and one 17 ft. section of 6 ft. high fencing at 18026 Beverly Road, not to exceed the length of the garage. The fences are located in the rear yards.

Manager Wilson displayed photos of the property and the location of the proposed rear yard privacy fences. The fences would provide separation between the entrances for the two properties.

Board members questioned whether either or both of the proposed fences meet the privacy screen requirements of the ordinance and therefore would not require a variance. The ordinance regulations were reviewed. Questions on the fence placement were addressed by the petitioner. After discussion of the case, it was the interpretation of the Board that the proposed fences appear to meet the requirements of a privacy screen.

Ms. Von Habsburg-Lothringen requested that the case be tabled for further clarification by Administration as to whether the proposed fences meet the requirements of the privacy screen ordinance. If so, a variance will not be needed. Wilson and the code enforcement officer will verify the dimensions of the fence and property to make a final determination.

CASE NO. 1257

Petitioner/Property: Elizabeth Klos
18136 Buckingham
24-02-230-019

Village Fence Ordinance: 22.08: “Fence in the front yard shall not exceed 36 inches in height above grade...must be 35% open to air and light”.

Deviation requested: The petitioner requests to install a 4-ft. black aluminum fence with 1 5/8 in. spacing.

Wilson displayed photographs of the property, house, and existing fencing. The petitioner is requesting to replace three sections of existing 4 ft. high fence with a new fence. The fence portion on the west side of the house is in the side yard and meets up with the adjacent neighbor’s fence. The two sections east of the house were determined to be rear yard fences that would not require a variance. It was determined that the open air requirements would be met by the style of fence proposed.

Liz Klos was present with her decorator and requested to replace the current fence that is in a state of disrepair with new fencing. They maintained that it would be more aesthetically and architecturally pleasing to erect a 4 ft. high fence that would meet up with the neighbor’s existing fence.

Board members pointed out that a 4 ft. high fence would be allowed if the applicant were to erect the new fence 18 ft. back to extend from the rear of the house to the side lot line. The petitioner responded that she would lose 18 ft. of back yard space if the fence were set further back. Klos stated that she contacted four adjacent neighbors, who are in favor of replacing the 4 ft. high fence in the current location.

Questions regarding the proposed fence were addressed by the petitioner and Manager Wilson. Board members suggested that the petitioner either retain the existing fence or erect a new 4 ft. high fence at the rear of the house, which would not require a variance. The east portions of fence as proposed do not require a variance. Board members did not think that the petitioner demonstrated that enforcement of the ordinance creates a peculiar or exceptional practical difficulty.

The petitioner opted to table her case to consider whether to proceed with a request for variance. The Village will issue a permit for a 4 ft. fence on the east side of the house.

PUBLIC COMMENTS

None

ZONING BOARD COMMENTS

None

MANAGER COMMENTS

None

Motion by Eifrid, second by Delaney, to adjourn the meeting at 8:55 pm.

Motion passed.

Michele Tillman, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary