

Present: Chairperson Tillman; Vice-Chair Schafer; Members: Delaney, Donnelly, Fox, Grinnan, Mueller, Rass and Verdi-Hus

Absent: Eifrid

Also Present: Village Manager, Chris Wilson  
Planning Consultant, Brian Borden  
Village Attorney, Tom Ryan

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 SEPTEMBER 12, 2013**

Motion by Fox, second by Rass, that the minutes of the regular Zoning Board of Appeals meeting held on September 12, 2013 be approved as submitted.

Motion passed.

**CASE NO. 1258**

**Petitioner/Property:** Chad Joseph  
18156 Kirkshire  
24-02-227-028

**Village Ordinance 22.24.010 (a):** R-2B single family residential requires a minimum 40 ft. rear yard setback.

**Deviation requested:** The petitioner requests a deviation of 5.5 ft. from required 40 ft. rear yard setback for a family room/mud room addition.

Village Manager Wilson displayed a site plan and photographs of the property on the smart board to assist with outlining this case. The applicant is requesting a variance of 5.5 ft. from the required 40 ft. rear yard setback in order to construct an addition consisting of a family room and laundry/mud room. The addition will extend from the back of the house.

The petitioner Chad Joseph stated that the proposed addition will be located about one foot inside of the main portion of the existing deck footprint. The deck will be demolished and removed. Joseph commented on the peculiar shape of the lot, which is wider than it is deep. The addition will add needed space to their 1951 Cape Cod home. The plan is to increase the size of the living room at the rear of the home looking out into the yard and to provide a laundry/mud room with an entrance from the garage. Joseph said that he has planted 60 seven foot high arborvitae at the back of the property to provide privacy and screening.

In response to inquiries from the Board, Joseph stated that keeping the addition within the required setback would result in a smaller living space that would not be as functional. He mentioned that they explored the possibility of building the addition to the west. This was not feasible based on the functionality of the space and economic considerations of building a new garage. Joseph addressed questions from Board members.

The petitioner submitted eight letters from neighbors who are in support of the variance requested to build the proposed addition.

**Decision:** Motion by Schafer, second by Delaney, that the petitioner’s request for a 5.5 ft. variance from the required 40 ft. rear setback be granted due to the hardship based on the shape of the lot and the placement of the home on the lot.

Roll Call Vote:

Fox	- no
Mueller	- yes
Rass	- yes
Schafer	- yes
Tillman	- yes
Verdi-Hus	- yes
Grinnan	- yes
Delaney	- yes
Donnelly	- yes

Motion passed (8 – 1).

**CASE NO. 1259**

**Petitioner/Property:** Freddie DuBose  
31820 Bellvine  
24-03-327-003

**Village Ordinance 22.24.010 (a):** “Front Open Space. Where a front open space of greater or less depth than forty feet (40') exists in front of a single family residence or residences presently on one side of a street in any block and within two hundred feet (200') of the lot or parcel, the depth of the front open space of any building subsequently erected or remodeled on that side of the street in that block shall not be less than the average depths of the front open space of such existing residences.”

**Deviation requested:** The petitioner requests a deviation of 10 ft. from the current front open space ordinance requirement.

Manager Wilson explained that this case involved a new home under construction at 31820 Bellvine Trail following the demolition of an existing structure. There is an issue with the required 40 ft. front yard setback requirement in the R-A zoning district. Another standard requires a house being built or modified to have a front yard setback that is no less than the average of the front yard setbacks of homes within 200 feet of the property on one side of the street. The petitioner’s house, which is under construction, does not meet that standard.

Wilson measured the distance from the right-of-way to the front of the petitioner’s house, which is 94 feet. The four houses (two on either side) adjacent to the lot in question have front yard setbacks of 93 ft., 95 ft., 99 ft., and 113 ft., or an average of 100 ft. The petitioner would need a variance of 6 ft. to construct the house as proposed. It was noted that the house directly north of

the property in question is approximately 20 ft. farther back than the other three homes used to compute the average front setback.

The Board is in receipt of a letter dated April 22, 2013 from LSL Planning to the Village Building Department regarding a dimensional review of the proposed residence at 31820 Bellvine Trail. The site plan was approved per LSL Planning and building permits were issued by the Village. Construction had begun when it was brought to the attention of Village Administration and Council that Section 22.24.010 (a) was not properly interpreted in the plan review process. At that point, the petitioner had done an extensive amount of excavation work on the basement as well as footing work. The Village notified the petitioner that, based on additional review, there was an issue with the 34 ft. deep garage extending into the required front yard setback; the house is designed to be set back 128 ft. from the front lot line.

Wilson displayed photographs of the site plan and the property. A view was displayed showing that framing of the house has begun. The site plan depicts the new construction plan set over the previously existing home. The site plan indicates property elevations. It was noted that there are topography and drainage issues in this area of the Village. The property drains towards the rear and from left to right across the property. Wilson stated that the Village has been working with the petitioner on a drainage plan for this property.

Wilson acknowledged that there have been concerns regarding the approval process whereby the original site plan was approved. He has asked planning consultant Brian Borden from LSL Planning to attend this meeting. Village Attorney Ryan was also in attendance due to the peculiar nature of this case in that the petitioner's site plan was approved and construction begun. It was later determined that the site plan was not in compliance with Section 22.24.010(a) of the ordinance.

Project architect Frederick W. Mahoney stated that the building is underway as shown in the photographs. Plans for the residence were reviewed by the Village building department in early May of 2013. The petitioner was notified about 30 days ago about the necessity to obtain a variance. Mahoney related the dimensions of the lot. Lot area is 49,658 sq. ft.; the lot is 140 ft. wide by 314 ft. deep. The house footprint is 4,249 sq. ft. with lot coverage of 8.55 percent. The setbacks were indicated. Grading on the project has been designed by Spicer Engineering.

Mahoney stated that the house under construction is 5-8 ft. further forward than allowed by the ordinance. He indicated that the four houses directly across the street from 31820 Bellvine are positioned about 20 ft. closer to the street than the DuBose house.

Questions from Board members were addressed by the architect Fred Mahoney, property owner Freddie DuBose, and general contractor Cullen DuBose.

Board members discussed Ordinance Section 22.24.010(a). It was noted that each house on a block will have a different set of four homes within 200 ft. of that particular parcel. Borden remarked that the language of this ordinance section creates a moving target; there will be some amount of variation in front yard setbacks from house to house. A future goal of the Village may be to reword this ordinance to improve its effectiveness in the community. It is not the intent of this section to create nonconformity.

Tillman suggested that requiring a different standard for every parcel constitutes site zoning. She understood that the intent of the ordinance section was to prevent a house from being constructed with a 50 ft. front setback if all the houses on the street had 100 ft. front setbacks. The idea was to provide reasonable continuity rather than strict adherence.

The option of setting the house back toward the rear of the property was questioned. It was mentioned that there were topography and drainage issues raised by the engineering department in terms of constructing the residence further back on the lot. Moving the structure further to the rear would create additional drainage and grade concerns for the reason that the natural drainage of this house and surrounding properties is toward the rear. Water flows southeast on the lot towards Vallen Court. Wilson said that the grading plan has been reviewed on multiple occasions by the Village's public services department. Alterations have been made to the grading plan, and the petitioner has been notified that a Certificate of Occupancy will not be issued until the grade plan is satisfactory to the Village.

The petitioner was asked about the impact to the project if the house were moved back 6-8 feet. Mahoney responded that building further back on the lot would impact existing trees, grading and water flow going towards Bellvine Trail.

In response to an inquiry, Wilson related that the petitioner had an issue with the layout of the columns listing open space requirements in Chapter 22.24.010 as it appears on the Village website. The petitioner did not think that subsection (a) and (o) applied to both R-A and R-1 zoning districts within the Village.

Wilson related that drainage that results from the property has to be self contained on the property or directed toward some kind of collection system, private or municipal. The Village looks at each lot individually. A property owner is responsible for ensuring that their lot is not exacerbating existing drainage issues. Wilson noted that every foot of this house that is located farther back impacts the drainage of this property and the larger area.

Fox asked how the petitioner would have proceeded before the site plan was approved and construction was begun if he had the opportunity to alter the site plan to conform to the setback requirement or had the choice to request a variance from the ZBA to position the house 6-8 ft. further forward on the lot. She was asking if there was a practical difficulty that would have prevented the petitioner from building the house further back on the lot if he had that option. Freddie DuBose responded that they may have looked at a different type of house if they were aware of a violation and the need for a variance. His response suggested that the hardship was created by the Village approving this site plan and the property owner beginning construction.

Tillman thought that the variance requested would be consistent with homes in the area given that the houses across the street and other houses in the area have less than 100 ft. front yard setbacks. Further, the placement of the structure further back on the lot would render the property unbuildable given the topography and hydrology of the site. She did not think that the variance was self created for the reason that the petitioner assumed that he was compliant with all Village requirements, and a building permit was issued. Donnelly expressed the view that it has been explained that the variance requested meets the legislative intent of the ordinance section in question.

The property owner submitted three letters from neighbors across the street from the petitioner's property. These individuals were in support of approving the variance as requested to build the home.

Frank Leto of 31894 Bellvine Trail, adjacent property owner to the north, voiced concerns relative to the new house construction. The plans show that the grade of the adjacent property will be raised 5 ft. from the original grade. The placement of the garage 20 feet in front of his house will block his view. He had issues with the drainage and the proposed retaining wall on the property next door. Leto stated that he brought his concerns to the Village prior to construction. He is concerned that the house at 31820 Bellvine will negatively affect his property values.

Betty Baron of 31781 Bellvine Trail, who lives directly across the street from the home under construction, said that she was delighted to see this beautiful home being built. She had no objections to the project and believed the house will benefit the neighborhood. Baron was not aware that there was a neighborhood association in her area.

Mary Leto of 31894 Bellvine Trail was opposed to the new construction adjacent to her home on the basis that the garage is located 20 feet forward of her house and will block any view from her home. She also had concerns with drainage issues.

Frank Flynn of 31745 Topper Court stated that he lives on the court behind the house in question. He thought that it was unfortunate that events occurred that resulted in the construction of a house that does not conform with the ordinance. The garage is 25 ft. too far into the front yard based on the average. He made the point that the architect could have designed a house that conformed to the ordinance.

Bill Wegert of 32420 Westlady distributed a satellite map of the area. He talked about the questionable interpretation of Ordinance 22.24.010(a) by the City of Royal Oak, LSL Planning and Manager Chris Wilson with regard to the new construction on Bellvine Trail. Wegert provided background on the site plan, issuance of permits, and new construction relative to this case leading to a violation of the front yard setback at 31820 Bellvine. He believes that there was no hardship or exceptional practical difficulty demonstrated. The purpose of Ordinance Section 22.24.010(a) is to preserve the integrity and standards of Village neighborhoods. Wegert asked that the request for deviation be denied.

Bob Walsh of 20655 Smallwood Court, president of the area homeowners' association, expressed the view that there was no hardship demonstrated relative to this case and no practical difficulty.

**Decision:** Motion by Schafer, second by Verdi-Hus, that the petitioner's request for variance with regard to the existing construction limits of the garage as shown on previously-approved plans and as currently constructed which will result in a required deviation of 8.5 feet be granted for reasons of (i) the topography and hydrology of the property require that concessions were made in locating this structure further forward (i.e. closer to Bellvine Trail) than would otherwise be necessary; (ii) that the apex of Bellvine Trail being at its furthest point forward (west) at this property also impacts the location of the appropriate setback; and (iii) in general, front yard setbacks in the neighborhood are similar to what the

petitioner is asking for and, thus, the variance would have a minimal affect on the rest of the community.

Roll Call Vote:

Mueller - yes  
Rass - no  
Schafer - no  
Tillman - yes  
Verdi-Hus - yes  
Grinnan - yes  
Delaney - yes  
Donnelly - yes  
Fox - yes

Motion passed (7 – 2).

**PUBLIC COMMENTS**

None

**ZONING BOARD COMMENTS**

Verdi-Hus referred to a Zoning Board case in August of this year regarding a variance request to allow a privacy fence for rental property at 14 Mile and Greenfield Roads. The appeal was denied, but the fence in front of the house is still in existence. Wilson will review the minutes of that meeting and look into this with the code enforcement officer.

Fox explained her vote against granting a variance from the rear yard setback requirement in Case No. 1258. She thought that a more modern and realistic approach for judging open space than the designated required setback would be to use a percentage of the required open space. Fox suggested that the Village should look at the way it reviews open space in these situations and consider an ordinance revision to accommodate existing situations where an addition is requested. Architecturally and aesthetically, it is better to go into the setback; but there should not be a need for a variance if there is sufficient open space on the lot.

Tillman asserted that the Village is fortunate to have the services of Brian Borden, Tom Ryan and Chris Wilson. They do a fine job for the community and she appreciates their integrity and hard work. Board members agreed with this assessment.

Schafer commented on formatting issues relative to the chart included in Ordinance Section 22.24.010. He suggested improving the layout.

Delaney referred to a case before the Board regarding the Rosenthal property on Southfield Road. He observed that there are overflowing trash cans lined up in back of that building. Wilson will talk to the code enforcement officer about this issue.

In answer to an inquiry from Grinnan, Wilson related that he waived the fee to come before the Zoning Board for the applicant in Case No. 1259.

**MANAGER’S COMMENTS**

Wilson stated that the Planning Commission will going through a Village Master Plan review process in the coming year. They will be looking for comments from the Zoning Board regarding issues that have surfaced and need to be addressed.

Wilson informed the Board that the Village is considering a formal agreement with the City of Royal Oak for building department services. One of the issues that has come up is how the Village will formalize the site plan review and drainage review process. The Village proposes to bring on LSL Planning for site plan review and Hubbell, Roth & Clark for the grade plan review process.

**PLANNING CONSULTANT/ATTORNEY COMMENTS**

Planning consultant Brian Borden commented that the site plan review issue involving Case #1259 was due to his oversight. Moving forward, LSL will review the technical language of Section 22.24.010(a). It is a moving target and not user friendly for residents of the community, the Zoning Board, or Planning Commission. The intent is there, but it should be written to allow some flexibility. Borden also suggested requiring more detailed plan submittals. There are adjustments that could be made to the ordinance language as well as procedural modifications.

Tom Ryan commented that the Zoning Board did a good job tonight. He referred to the discussion on Case 1259, noting that the Board made a reasoned decision and covered the record well. He added that LSL Planning and Brian Borden do an excellent job for the Village.

Motion by Delaney, second by Verdi-Hus, to adjourn the meeting at 9:29 p.m.

Motion passed.

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

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

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