

Present: Chairman Eifrid; Vice-Chair Tillman; Members: Crossen, Donnelly, Fox, Raeder and Rass

Absent: Verdi-Hus

Also Present: Village Manager, Chris Wilson
Council liaison, Abboud

Vice-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 NOVEMBER 10, 2014

Motion by Raeder, second by Tillman, that the minutes of the regular Zoning Board of Appeals meeting held on November 10, 2014 be approved as submitted.

Motion passed.

CASE NO. 1273

Petitioner: Edward Paley

Property: 20120 Village Drive

Village Ordinance: **Section 22.08.150 Section B2.** Privacy Screens: Privacy screens that do not exceed six feet in height above grade are permitted as follows:

a. In rear and side yards to enclose an area on up to three sides only that is located a minimum of 10 feet from any lot line and with a total horizontal length that does not exceed 25% of the lot line portion of the rear yard.

Deviation requested: To erect a privacy fence closer than 10 feet from the lot line.

Manager Wilson said that this property at 20120 Village Drive is in an R-A zoning district. The homes in Evergreen Village were developed similar to a cluster development; the setbacks do not conform to a traditional R-A development. It is a large residential complex developed with park area set aside. The fencing in question exceeds six feet in height and is not located 10 feet from the rear lot line, which is required for a privacy screen.

Wilson stated that Village staff has dealt with this petitioner for some time concerning privacy issues and the condition of the lot abutting his property. Village administration advised Mr. Paley a few years ago to consider a living fence. The petitioner planted arbor vitae along the rear lot line, which provided some relief to the problem. There was a section of evergreen trees that died and were replaced twice. The contractor hired by the petitioner erected an approximately 9 ft high wood panel along a portion of the rear lot line without seeking a fence permit. Wilson displayed photographs of the front of the property and the wood panels in the rear yard located close to an existing chain link fence on the lot line.

Board member Fox distributed copies of a plat of the Evergreen Village subdivision. She noted that the length of the Paley's rear yard is 141 ft. She estimated that the three panels in question were about 24 ft. long. The problem with the screening fence is the height and proximity to the existing fence (22 in.) on the lot line. Fox also said that the Paley's have built up the grade along the fence line.

Wilson mentioned that Board member Sharon Fox and her husband are the neighbors who abut the applicant's property. Crossen suggested that Ms. Fox recuse herself as a sitting member on this case. Sharon Fox recused herself from voting on Case 1273 for this reason. She left her seat at the table and sat in the audience.

Edward Paley presented his case and described the existing hardships that warrant the granting of this variance. Paley moved into his home 7½ years ago. He had a privacy and security panel erected in the spring of 2014 after a group of arbor vitae that screened his lot from the abutting yard died and were replaced twice. The applicant explained that there is a need for screening and that he along with ten of his neighbors have complained about the unsightly condition of the abutting property.

Paley said that he waited seven years to construct the panel thinking that existing conditions would improve. He noted that his house is close to the lot line and he has a deck off the back of his house. Paley related that there was a lantern attached to an out building located on the abutting lot, which kept them awake at night. This light was removed after a court hearing. Paley referred to two out buildings on the abutting property, a garage and a shed, and complained about the colors they are painted. Paley displayed photos of items he referred to as "junk" on the adjoining lot. He mentioned that the neighbor to the rear addressed him one time using swear words.

Eifrid reminded the petitioner that the Board could consider only the hardships related to the case and reasons why a variance from the ordinance should be granted for his particular property.

Wilson mentioned that the Evergreen Village development has smaller lots relative to the surrounding R-A district area. The property in question has a small rear yard with less than 40 ft. from the house to the lot line. These are incompatible uses with a fairly dense development abutting a semi-rural subdivision. In answer to an inquiry from the Board, Wilson said that there have been violation citations issued to the abutting property owners. It was more of a problem several years ago with complaints received from neighboring properties regarding the condition of the rear yard. There has been a history of complaints, citations given, and court action regarding the light issue that was resolved.

Wilson explained further that the Village issues a field correction notice and delivers it to a residence when there is an ordinance violation. There is a period of 30 days to resolve the violation. Village staff often talks with the property owner about issues and tries to resolve the situation to the satisfaction of both parties. In this situation, a living privacy screen was attempted to screen the view of the neighbor's back yard.

Board members discussed the request for variance. Members sympathized with the need for screening and privacy on this property. Tillman reviewed that the Board has to be convinced that enforcement of the ordinance would create an exceptional or undue hardship. It was noted 6 ft. fences are not allowed in the Village. The petitioner would have been aware of the zoning laws if a permit was pulled for the privacy screen. Board members encouraged the petitioner to consider a lesser variance or other alternatives that would provide privacy. It was suggested that there are other solutions.

Paley stated that he would lose valuable trees if he were to move the fence panels further away from the lot line, and the privacy screen would be 12-15 feet from their deck. He added that none of the neighbors in Evergreen Village have complained about the privacy screen. There was some conversation by the Board relative to what type of tree would grow in the location near the lot line and different options for a natural fence.

Council liaison Abboud said that he sympathized with both parties. He also questioned whether there was a lesser variance that would accommodate the needs of the petitioner. He suggested that the applicant consider an alternative.

Alan Fletcher of 20080 Village Drive, member of the Board of Evergreen Village Homeowners Association, verified his support for Ed Paley. He said that this problem has been ongoing for years with no resolution.

Leonard Terman of 20110 Village Drive said he lives next door to the Paleys and directly behind the Fox residence. He commented on the debris in the rear yard of the abutting property. He suggested that the neighbors should communicate and work out their issues.

Sharon Fox of 20605 Glenhill Court stated that five Evergreen Village subdivision lots abut the east side of her 1-1/3 acre parcel. Her lot backs up to the Douglas Evans nature area; most of her backyard remains natural woods. Fox mentioned that the outbuildings consisting of a garage and a shed were permitted by the Village. She commented on issues with the abutting neighbor and related what she believed to be the problematic intervention by the Village code enforcement officer. Fox thought that the problem was that the Paleys do not like the way her back yard looks compared to the landscaped look of Evergreen Village. She maintained that the screening fence should go through the correct process; she would like to see a green fence.

It was noted that five affirmative votes are needed to grant a dimensional variance. Six members of the Zoning Board will vote on this case. The petitioner asked that his request for variance be postponed until the next meeting of the ZBA.

Motion by Rass, second by Tillman, that Case No. 1273 be postponed until the next Zoning Board meeting at the request of the petitioner.

Motion passed.

ZONING BOARD COMMENTS

None

ADMINISTRATION COMMENTS

Wilson stated that there is one vacant position on the Zoning Board and two vacancies for alternate positions on the ZBA.

Motion by Crossen, second by Tillman, to adjourn the meeting at 8:56 p.m.

Motion passed.

**David Eifrid, Chairperson
Zoning Board of Appeals**

**Ellen E. Marshall
Village Clerk**

**Susan Bernard
Recording Secretary**