

REGULAR ZONING BOARD OF APPEALS MEETING MINUTES – OCTOBER 12, 2015 –
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Present: Chairperson Eifrid; Vice-Chairperson Tillman; Members: Crossen, Donnelly,
Maxwell, Mitchell, Raeder, Alternate Member: Lepidi

Absent: Rass, Verdi-Hus

Also Present: Village Manager, Wilson
Planning and Zoning Administrator, Wilks

Zoning Board Chairperson Eifrid called the regular Zoning Board of Appeals meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

REVIEW AND CONSIDER APPROVAL OF MINUTES OF A REGULAR ZONING BOARD MEETING HELD SEPTEMBER 14, 2015

Motion by Raeder, second by Tillman, that the minutes of the regular Zoning Board of Appeals meeting held September 14, 2015 be approved.

Motion passed.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

Alternate Member Lepidi was seated at 7:35 pm due to the absence of member Rass constituting an eight-member board.

CASE NO. 1283

Petitioner: Toby Beach

Property: 18580 Devonshire

Village Ordinance: 22.24 Schedule of Regulations

Zoning District R-2B requires a minimum side open space of 5 feet for side one and 10 feet for other side.

Deviation Requested: To build an attached garage needing a 5-foot variance from the stated 10-foot minimum side open space requirement.

Administrator Wilks explained that the garage currently conforms to the ordinance because it is unattached. She said the petitioner's plans call for keeping the same foot print as the current structure, but would make it attached to the home, which requires a 10-foot minimum side open space requirement. Wilks displayed pictures of the current structure depicting its current condition.

Tillman asked if the garage should be currently considered attached because it is connected to the home by a breezeway structure. She stated that if it is, the petitioner should be seeking a continuation of the non-conformity as opposed to a change.

Manager Wilson explained that he spoke with Village planning consultant Brian Borden, LSL Planning, regarding the proper classification of structure. He reported that Borden said its current classification as detached is correct. Wilson indicated that with Borden's help, administration determined that the petitioner's request would make the garage an attached structure.

Chairperson Eifred explained that the Zoning Board of Appeals is guided by zoning law and that the Board has to act in a way that doesn't change those laws. He advised the petitioner to make her case that the current zoning laws are creating a hardship for her.

Petitioner Beach said moving the garage closer to the house would keep her from being able to park a vehicle in it. She indicated that she wasn't looking to expand the structure's footprint.

Eifred asked if the new structure would be conditioned. The petitioner said it would not.

Donnelly asked why the petitioner wanted an entirely new garage. The petitioner said the structure was in poor condition and would need substantial repairs. Beach said the price of those repairs was about the same as demolishing and rebuilding the garage.

Tillman asked if the new structure would be in character with the surrounding neighborhood. The petitioner answered affirmatively. Tillman further asked if there would be any living space in the new structure. The petitioner said there would not be living space in the new structure.

Eifred asked if the overhangs of the new structure would be similar to the current structure. The petitioner answered affirmatively.

Wilson indicated that the building materials of the new structure would be fundamentally the same as the home. He added that the new structure would not be conditioned, but would be attached to the home and give access to the home. Wilson explained that the Board's task was to approve or not approve the variance, or make a determination that the petitioner's request would not be adding an attached structure.

Raeder said a determination on whether the structure should be considered attached or not should be made by the City of Royal Oak's building department. Wilson said Royal Oak would not take the petitioner's application until the Village of Beverly Hills signs off on zoning compliance. Raeder said the Board should grant the variance.

Crossen asked if the new structure would have a larger door than the original structure. The petitioner said it would not.

Mitchell asked if the petitioner ever intended to condition the new structure. The petitioner said she has no plans to ever condition the structure.

Brian Reemmer, 18604 Devonshire, stated that the new structure would be beneficial to the neighborhood.

Motion by Maxwell, second by Raeder, to grant approval of a variance of five feet from the minimum side open space requirement and consider the proposed garage attached. Approval based on statutory language for practical difficulty given the size of the lot, condition of the current structure and character of the neighborhood.

Roll Call Vote:
Motion approved (8 - 0).

CASE NO. 1284

Petitioner: Sylvia McBride

Property: 22722 N. Nottingham

Village Ordinance: 22.08.150 Fence, Wall, And Privacy Screen Regulations

B. Requirements in Single Family Residential Districts:

- a. Front Yard: A fence in the front yard shall not exceed 36 inches in height above grade and shall not extend back toward the front of the principal building more than eight feet.

Deviation Requested: To build a fence in the front yard which extends back toward the principal building more than eight feet.

Wilks explained that the petitioner had already installed a fence approximately two feet in height. She said the fence does extend back toward the front of the principal building farther than eight feet, the allowable distance per Village ordinance. The fence extends back approximately nine feet on one side and 24 feet on the other. Wilks displayed photos depicting the existing conditions on the property.

Raeder reminded everyone that the Board does not enforce neighborhood association rules.

Tillman asked if the fence totally enclosed the home to the front yard. Wilks answered in the affirmative. Tillman asked if the petitioner's backyard was useable for the purpose of walking a dog. Wilks said it was not due to a very steep grade and that it would be difficult to fence the petitioner's back yard.

Raeder asked why an invisible fence was not considered prior to installation of the front yard fence.

Eifred indicated the petitioner's case was unique because the fence's height was just two feet. He said it made him question the definition of a fence. By ordinance, Wilks explained that a structure taller than one foot is considered a fence. Eifred said landscaping would obscure the two foot fence within a few years. Tillman noted that the Village enacted an ordinance for decorative front yard fencing approximately 10 years ago.

Hillary Morgan spoke on behalf of petitioner McBride, her mother. Salvatore Morgan, son-in-law of the petitioner, also spoke. He indicated that a lot of wildlife, including coyotes, inhabit the area behind the petitioner's home. Morgan said the petitioner has two very small dogs that an invisible

fence would not keep wildlife out, thereby putting the dogs at risk. For that reason, he said, an invisible fence was not practicable.

Hillary Morgan explained that the fence was installed at its current specifications because of a very large tree in the front yard of the home. She indicated that the back yard was too steep for the 87-year-old petitioner to use safely. Morgan said the petitioner came to Village Hall and was told that plans for the fence looked okay. She could not identify who was spoken to at Village Hall. Morgan explained that boxwood hedges planted in front of the fencing would obscure it within a year or two. Morgan said many neighbors have been complimentary of the fence, which is meant to contain the petitioner's two dogs.

Salvatore Morgan explained the size of the tree necessitated construction of the fence farther than eight feet away from the home. He indicated that the location of a flagstone flowerbox was another reason for the fence's location.

Tillman asked if placing the fence behind the tree would have been feasible. Hillary Morgan indicated that it was not. Tillman noted that if the fence had been placed behind the tree there would have been no need for the variance. She explained that it is incumbent upon homeowners to devise plans, if possible, that require the least variance possible from the Village's ordinances. Tillman said the petitioner's problem with having a space for her dogs does not constitute a hardship under the ordinance. Tillman further stated that the petitioner's fence would not keep wildlife out.

Salvatore Morgan indicated that the petitioner thought the plans for the fence were approved because she had spoken to a Village official and that the builder had agreed to pull proper permits from the Village. He added that the petitioner only found out afterwards a permit had not been pulled. Tillman indicated the petitioner had the basis for action against the fence company because it did not pull permits.

Raeder asked if the petitioner was aware that the homeowner's association had a no fence rule. Salvatore Morgan indicated the petitioner was not aware.

Mitchell asked if the fence had cement posts. Salvatore Morgan answered affirmatively.

Jean Hillman, 37533 Robinhood Drive, indicated that the petitioner's house was kept up nicely. She said the fence would help keep the petitioner in her home. Hillman indicated that bringing the fence to ordinance specifications would defeat the purpose of the fence.

Maureen Dowsley, 31952 Robinhood Drive, expressed that the petitioner's fence was decorative in nature. She said the Board did not have the authority to determine what or what was not a hardship relative to family pets. Dowsley indicated that the fence was not meant for privacy.

Theresa Domzal, 22750 King Richard Court, stated concern that the Board would be setting a bad precedence by granting the variance. She indicated that the petitioner has other alternatives to address letting her dogs outside. Domzal said it would be bad precedence to allow the variance for, essentially, a dog run in the front yard.

Kelly Martin, 22596 King Richard Court, indicated that she is a member of the Nottingham Improvement Association Board. She said the Board had not approved the fence, thereby forcing the Board to get involved. Martin said the bylaws of the association are published each year and that residents are asked to come to the Board first to help avoid the need for variances from the Village. She said she believed the petitioner was aware of the NIAB rules prior to the installation of the fence. Martin said approval would set a bad precedence and that the purpose of the fence was functional, not decorative.

Kristen Farrar, 22719 North Nottingham, does not believe granting the variance creates a precedence because each case is decided individually by the Board. She added that it was a single variance, not an amendment to the ordinance.

Claire Morgan, granddaughter of the petitioner, said her grandmother broke her shoulder about 10 years ago and was not, because of her age, physically able to use her backyard for her dogs.

Norma Czajka, 22359 Nottingham Court, spoke in support of the fence, saying it is beautiful.

Salvatore Morgan indicated that the petitioner was not aware of the NIAB's fencing rules. He noted that many homes in the neighborhood currently have decorative split rail fencing. Morgan reiterated that the petitioner believed she was in compliance at the time the fence was installed.

Wilson indicated that homeowner association regulations and Village ordinances are separate sets of rules and that approvals must be received for both. He explained that a use variance requires the petitioner meet a hardship standard while a non-use variance requires the petitioner to meet a practical difficulty standard. Wilson explained that McBride's request was for a non-use variance. He added the enclosure versus decorative fence question isn't covered specifically in the ordinance. Wilson indicated the ordinance does not specifically state that certain items in a front yard cannot be enclosed.

Raeder said the variance request was significant because it was much farther than the eight feet the ordinance allows. He added that he was not convinced that an invisible fence would not have worked for the petitioner.

Donnelly asked if decorative boulders could have been used instead of fencing.

Tillman stated her concern was setting a bad precedence by approving the variance request. She indicated that if the fence had been placed on the edge of the home's walkway, there would have been no need for a variance. Tillman explained that the Board must consider possible future cases when deciding on an individual case.

Eifrid indicated that the petitioner could have sought other solutions besides the fence. He indicated that boxwood shrubs do grow quickly and would obscure the fence quickly.

Mitchell does not believe granting the variance would set a precedent. She indicated that the petitioner's backyard did create a practical difficulty. Wilson explained that the practical difficulty

standard did not apply to the issue of removal of the fence that had already been constructed. Maxwell indicated that the contractor was at fault for not pulling permits.

Raeder expressed concern that by approving the variance, the Board would be encouraging residents to install fencing or complete other projects without first getting proper approval. Eifrid indicated that if the variance request had come to the Board first, the Board would likely have given a variance due to the tree but not at the fence's current configuration.

Motion by Raeder, second by Tillman, to grant a variance for the front yard fence as constructed at 22722 N. Nottingham. Approval based on practical difficulty due to the grade of the backyard.

Roll Call Vote:
Motion approved (8 - 0).

CASE NO. 1285

Petitioner: Daniel Nunez

Property: 16128 Marguerite

Village Ordinance: 22.04 Definitions

Privacy Screen: Any unroofed manmade vertical structure intended and used as a visual barrier designed to inhibit observation of an area from off the lot.

Structure: Anything constructed or erected, the use of which requires location on the ground or attachments to something having location on the ground.

Interpretation Requested: The petitioner has three 8' x 6' x 18" planter boxes that he seeks to place along the rear and side property line. The Village has determined the boxes would be regulated as a privacy screen due to the size, physical appearance, and intended use. The petitioner disagrees with that determination and seeks Zoning Board of Appeals interpretation.

Wilks indicated that the case was related to case 1282 brought before the Board in September and tabled. In that case, the petitioner requested a privacy screen along the entire backyard of the home and a portion of the side. The petitioner requested case 1282 tabled with the intent of modifying his petition. Wilks displayed photographs depicting the planter boxes.

Tillman asked if the planter boxes were allowed to be in the petitioner's driveway. Wilson indicated the Village code enforcement officer was working with the petitioner on where the planter boxes could be stored.

Raeder asked if the planters could be classified as a structure. Wilson said they were not classified as structures. He added that they were not classified as accessory structures.

Wilks indicated that Administration believes the planters should be classified as privacy screens because the petitioner intends to use them to block the view of his backyard.

Tillman asked if the planters were portable. Wilson answered in the affirmative.

Mitchell asked if the petitioner wanted more than two planter boxes. Tillman said the petitioner is asking the Board to define planter boxes.

Nunez indicated the idea of using the planter boxes was a suggestion given to him in September by the Board. He said the spirit of his request was ultimately to gain privacy for his backyard. Tillman asked if the Village code enforcement officer told him that moveable items would not be classified as structures.

Wilks explained that a privacy screen is a structure. She read the definition of a structure under the Village's ordinance. Wilks indicated that the Board needed to determine if the planter boxes should be classified as a privacy screen. She indicated that the Village has different rules regulating privacy screens and structures.

Nunez explained that he wanted to create an area that he could enjoy. He said the small lot sizes of homes in his neighborhood makes privacy difficult. Nunez believes a privacy screen would be the best solution.

Wilson read the definition of a structure, which is anything constructed or erected that requires location on the ground. An accessory structure is any structure that is subordinate to the main building or the use of the land. A gazebo or children's play structure are examples. A privacy screen is any unroofed manmade vertical structure intended and used as a visual barrier designed to inhibit observation of an area from off the lot.

Eifrid asked if the petitioner has a garage, could he could still have another structure in his backyard because it would be an accessory structure. Wilson answered that if the planter boxes were classified as privacy screens he could, but that it would need to be located 10 feet away from the lot line.

Christopher Michaud, 16125 Amherst Avenue, explained that because of the dense shade in the backyard, it is very difficult to get anything to grow. Michaud expressed concern that it would likely cause even further shading and lead to death of more of his arborvitaes. His concern is that if the planter boxes are placed in Nunez's backyard and fall over, the fence would be breached and he questioned whose homeowner's insurance would be liable in such a situation. Michaud was also concerned for the safety of his dog if the structure falls over.

Annette Hobrecht, 16144 Marguerite, lives adjacent to Nunez and said she's not looking for more trees or screening. She said the Board asked Nunez to communicate with neighbors regarding the issue but Nunez failed to do so. She said Nunez has plenty of other space in his backyard to create privacy. Hobrecht indicated that the Board's decision would impact the Michauds. Crossen asked how she would be impacted. Hobrecht said she wouldn't be impacted, but the Michauds would.

Mark Everly, 16141 Lauderdale Avenue, said the planter boxes were privacy screens. He said it was not what the Michauds want and that he was there to support them.

Wilson said Village Administration has determined that the planter boxes are privacy screens. He said the petitioner has asked for an interpretation.

Motion by Tillman, second by Mitchell, to interpret the Village of Beverly Hills ordinance section 22.04 definitions of a privacy screen to include an 8' x 6' x 18" planter box.

Roll Call Vote:

Crossen	- no
Donnelly	- yes
Eifrid	- yes
Maxwell	- no
Mitchell	- yes
Raeder	- no
Tillman	- no
Lepidi	- no

Motion failed (3 - 5).

Motion by Raeder, second by Crossen, to interpret the Village of Beverly Hills ordinance section 22.04 definitions of an accessory structure to include an 8' x 6' x 18" planter box.

Roll Call Vote:

Crossen	- yes
Donnelly	- no
Eifrid	- no
Maxwell	- no
Mitchell	- yes
Raeder	- yes
Tillman	- yes
Lepidi	- yes

Motion approved (5 - 3).

OLD BUSINESS - CASE NO. 1282, TABLED AT SEPTEMBER 14, 2015 MEETING

Motion by Tillman, second by Maxwell, to table case 1282 until November 9, 2015.

Roll Call Vote:

Motion approved (8 - 0).

PUBLIC COMMENTS

None.

LIAISON COMMENTS

Abboud attended a three-day Michigan Municipal League conference in Traverse City. He attended several seminars at the conference including reestablishing urban places and suburban strategies for success. A presentation was also made regarding six Michigan communities successful with the use of clean energy. Abboud also attended a Southeast Michigan Council of Governments meeting where they elected a new president and board.

ADMINISTRATION COMMENTS

Wilson said the Village Council will hold a regular meeting on Tuesday, October 20 at Birmingham Groves High School to discuss water rates.

ZONING BOARD COMMENTS

Raeder asked for a pdf copy of the Village's Master Plan Update.

Motion by Crossen, second by Tillman, to adjourn the meeting at 10:08 p.m.

Motion passed.

David Eifrid
Chairperson

Ellen Marshall
Village Clerk

Scott Daniel
Recording Secretary