

Present: Chairperson Raeder; Vice-Chairperson Maxwell; Members: Crawford, Crossen, Gatowski, Mitchell, and Tillman; Alternates: Gennari, and Jawad

Absent: Members: Donnelly and Lepidi

Also Present: Planning and Zoning Administrator, Erin LaPere
Council Liaison, John George

Chairperson Raeder 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 DECEMBER 10, 2018

Motion by Crawford, second by Crossen, that the minutes of a regular Zoning Board of Appeals meeting held December 10, 2018 be approved.

Motion passed.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

Village Attorney Tom Ryan provided a memo outlining the procedural requirements for decision making by the Zoning Board of Appeals.

Raeder explained the responsibilities of the Zoning Board of Appeals and outlined the statutory requirements for demonstrating a practical difficulty for a petitioner to be granted a dimensional variance.

CASE NO. 1356 (re-hearing)

Petitioner: Michael and Kylene Lustri

Property: 32721 White Oaks Trail

Village Ordinance: 22.08.100 Accessory Buildings, Structures, and Uses in Residential Zone Districts All Residential Zone Districts require accessory structures be located in rear open space.

Deviation Requested: To retain and modify a deck constructed in the side yard to be no closer than 14.2 feet from the side lot line.

Petitioners are seeking a variance from requirements of Village Ordinance 22.08.100 Accessory Buildings, Structures, and Uses in Residential Zone Districts to retain a deck built in the side open space. The property is zoned R-1, Single Family Residential. In all single-family residential zone districts accessory structures are permitted, provided they are located in the rear open space. The petitioner has constructed the 16' x 24' deck in the side open space with access from the home through a pedestrian door located on the side of the attached garage.

On June 1, 2017, Village Code Enforcement was notified of construction at the property and upon site visit the petitioner was informed the deck being constructed required a building permit. The Code Officer had also visited the site earlier in the week upon receiving a complaint and was informed landscaping work was being performed. Subsequently, the petitioner applied for a building permit and he was instructed to cease construction until a permit was issued.

Upon review of the Village Zoning Ordinance and applicable requirements of the Building Code, the Village informed the petitioner he would only be permitted to construct the minimum required three (3) foot landing for pedestrian door access with stairs. The Village requested revised drawings that demonstrate compliance with requirements and informed him of the option to request a variance from the Zoning Board of Appeals if he wished to construct the deck as proposed.

The Village Building Official issued a stop work order on June 6, 2017. By that time construction on the deck was mostly complete. The petitioner disregarded the stop work order and completed the deck. Additionally, a neighbor filed a complaint with Public Safety for construction occurring on Sunday, June 4th. The Village sent a certified letter on June 12, 2017 informing the petitioner he was subject to citation for ordinance violation if the situation was not addressed appropriately. After receiving the notification, the petitioner filed a request for a variance.

The petitioner was denied a request for a variance on October 9, 2017. Upon certification of the minutes, the petitioner was notified the deck must be removed or made compliant with Village Ordinance within 30 days or they would be subject to penalties including a citation for ordinance violation. To date, the deck has not been removed and the petitioner did admit responsibility for the ordinance violation citation. The court has ordered the deck to be removed or modified to be in compliance with Village Ordinance.

Village Administration and the Village Attorney have met with the petitioners and encouraged them to consider a modification to a smaller structure that provides a landing area versus a deck. The petitioner's filed a request for a variance to retain and modify the existing deck, this case was first heard October 8, 2018 and decision was postponed allowing a decision by the full complement of the Board membership. After discussion at the November 13th Zoning Board of Appeals meeting, the petitioner's counsel and Administration met to discuss potential modifications to the structure. At the December 10th Zoning Board meeting the petitioner's counsel requested the matter be tabled due to inability for attendance by the petitioners due to health reasons. That request was granted, and the Board encouraged counsel to work with petitioners to further reduce the structure in advance of the January meeting date. The petitioners have not submitted a revision to their request for an 8' x 12' deck with stairs. The petitioner is seeking relief from the requirement that the accessory structure be located in the rear yard. If a variance is granted, the petitioner must comply with requirements for a building permit. If the matter is not resolved, there is a return court date of February 7th scheduled.

Lustri requested that the decision be tabled for an additional month to allow time for meeting with landscapers. The Board declined the request citing the length of time since initial violation occurred.

Lustri stated his attorneys have advised him that they will consider seeking appeal in Court. He provided the Board with examples of 3 decks in the Village previously approved by the ZBA.

When questioned by Tillman, Lustri confirmed that deck continues to stand at the size of 16' x 24'. He understands the building code allows for a 3' x 3' landing at the door, and that the existing deck remains in violation of Village code. He confirmed that he was notified by Administration that the deck was not compliant, and work needed to be halted before completion; this was ignored, and the deck was completed. He acknowledged a ticket was issued and accepted responsibility for building the deck in violation of the Zoning Ordinance. He confirmed that the ZBA has not indicated they would grant a variance for the current deck or any modifications to the deck. He noted that a landing built 3x3 in compliance with the ordinance would be adequate for access to the pedestrian door. Lustri also stated that they modified the grade in this location, thereby self-creating the current topographical conditions. Tillman confirmed that there were no physical barriers preventing the family from using a 3' x 3' landing with a staircase to the ground. Lustri confirmed that they currently have a rear deck that is in compliance with the ordinance, as well as a pool in the rear yard. He affirmed that the deck is not necessary to use the residence or provide proper access to the door.

The homeowner claims that they were unaware when the deck was built of the Village code, however they are willing to take down the deck. He stated they are planning to discuss restoration of the grade on site to provide a smaller access landing and removal of the deck with contractors.

Motion by Tillman, second by Maxwell, to deny the request for a variance from the requirements of Village Ordinance, Chapter 22, Section 22.08.100 Accessory Buildings, Structures, and Uses in Residential Zone Districts to retain and modify a deck that was previously constructed at 32721 White Oaks Trail due to self-created topography, applicant stating that no lesser variance would do justice, structure was constructed without permit, structure is not required for safe ingress and egress of the home, property is currently being used as Single Family Residential, no unique circumstances demonstrated by applicant, no undue burden to applicant by strict conformance of the ordinance, applicant acknowledged plans to remove deck and install landscaping as alternative to retaining the structure.

Roll Call Vote:
(9-0) Motion Passed.

CASE NO. 1360

Petitioner: PRM Custom Builders, LLC, 7457 Franklin, Ste 230, Bloomfield Twp, MI 48301
Property: 32650 Eastlady Drive

Village Ordinance: 22.24.010 (a) Front Open Space All Residential Zone Districts require front open space to be not less than the average front open space of existing homes within 200 feet on the same side of the street.

Deviation Requested: The petitioner seeks to build a new home that will be 96.6 feet from the front lot line.

Petitioner has withdrawn the request for a variance.

CASE NO. 1361

Petitioner: Cecilee Stone
Property: 18180 Kirkshire Ave

Village Ordinance: 22.24 Area, Height, Bulk, and Placement Regulations Residential Zone District R- 2B requires side setback of 5 feet on side one and 10 feet on side other.

Deviations Requested: The petitioner seeks to build an attached garage that will be 7 feet from east, side lot line.

Petitioner is seeking a variance from requirements of Village Ordinance, Chapter 22, Section 22.24 Area, Height, Bulk, and Placement Regulations to build an attached garage onto an existing house. The property is zoned R-2B, Single Family Residential. Section 22.24 requires a side set back of 5 feet on side one and 10 feet on side other for the principal building. Attached accessory buildings are subject to the same setback regulations as principal buildings.

The petitioner has an existing home that is nonconforming to the side setbacks with 6.8 feet on side one and 7.9 feet on side other. There is an existing attached garage that will be converted into living space and the proposed addition will serve as a replacement to retain use of an attached garage on the property. The existing house sits at a slight angle within the lot and the property is narrower at the front of the lot and widens at the rear. This results in the proposed addition to be 7 feet at the closest point while still following the line of the existing exterior wall of the house. The proposal otherwise meets requirements of the Village Zoning Ordinance, including front open space averaging requirements. A copy of the petition form and survey detailing the proposed location of the addition was provided to the Board.

Bill Currier, Beverly Road, Keller Williams Agent, clarified that the existing garage will be used in the rebuild. The floor is a poured cement slab and will be built over due to existing roof structure. The intention is to go straight forward and not deviate from the existing home line. The current home has 3-bedrooms, 1 bath, and is approximately. 1,512 sq ft. The proposed modifications will maintain the 3 bedrooms, but add a second bath, expand the living space and overall useable square footage. He stated that if the lot was square, a variance would not be needed.

Chad Joseph, Kirkshire, spoke in support of the request and believes the redesign stays within the spirit of the community.

Motion by Tillman, second by Crossen, that the Zoning Board of Appeals grants a variance from requirements of Village Ordinance, Chapter 22, Section 22.24 Area, Height, Bulk, and Placement Regulations to build an attached garage addition at 18180 Kirkshire Ave that is no closer than 7 feet to the east, side property line due to practical difficulties of the atypical shape of the lot, the placement of the home on the lot, no concerns for public safety or welfare, and a lesser variance would not provide relief for the resident.

Roll Call Vote:
Motion passed (9-0).

PUBLIC COMMENTS

None.

LIAISON COMMENTS

George reported that at the Council strategy session there was discussion about code enforcement, and the 2020 millage. He hopes to have more discussions with the Board on how they shape the future development of the Village.

ADMINISTRATION COMMENTS

LaPere reported that there are no cases for February and the Council adopted a change to the Zoning Ordinance instating lot coverage maximums in Single Family Residential Zone Districts.

ZONING BOARD COMMENTS

Raeder thanked everyone for their work on the White Trail deck case.

Motion by Tillman, second by Gatowski, to adjourn the meeting at 8:25 pm.

Motion passed.

Charles Raeder
Chairperson

Chris Wilson
Village Clerk

Elizabeth M. Lyons
Recording Secretary