

CITY OF SYLVAN LAKE
ZONING BOARD OF APPEALS
APRIL 9, 2008

A Meeting of the Zoning Board of Appeals, was held on Wednesday, April 9, 2008, opening at 6:05 p.m. at the Sylvan Lake Lutheran Church, 2399 Figa, West Bloomfield Twp., with Chairman Storrie presiding.

Present: Galacz, Alternate Holly, Menuck, Nechal, Storrie
Absent: None

Also Present: City Manager Martin, Clerk Clippert and City Attorney Bibeau

Chairman Storrie explained since MacGillis sits on the Planning Commission and voted on the Zoning Map and Ordinance change that affects this property, he didn't feel he should vote on a variance involving this ordinance.

APPROVAL OF AGENDA

Moved by Menuck, seconded Galacz, to approve the Zoning Board of Appeals Agenda for April 9, 2008, as presented.

Yes: All
No: None

MOTION CARRIED

VARIANCE REQUEST

Z-001-08

Property: 2360 Ferndale
Petitioner: Khalida Jarbou
Zoning Ordinance Sections: 78-296 Area, height, bulk and placement requirements

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant a variance from the zoning ordinance for a rear-yard setback variance, to allow the construction of a new addition and attached garage at 2360 Ferndale.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Storrie opened the hearing. Proof of mailings and required proof of application are in file.

Martin explained the request is for a rear yard setback. Currently the garage as it sits meets the zoning because it is a detached garage. If a new detached garage was built it would also meet the zoning requirements. Once it is attached it has to meet all the setback requirements. In this case it is a 30' setback and petitioner is asking for a setback of 6', requiring a variance of 24'. The petitioner's property is on a corner lot and is

considered to have two front yards for setback reasons. He stated he goes by the layout of the property to determine front, rear and side yard, not the street address or where the front door is located. In this instance the front of the property is Pontiac Drive. The proposed porch doesn't need a variance; it is within the requirements.

Petitioner, Khalida Jarbou, stated there are drainage problems which are hazardous and dangerous with the garage. This winter she had between 6" and 1' of water freezing in the garage. The garage is a one car garage and is close to collapsing. Physical safety is another issue. She added she has no storage space in the house and would like to have this. Functionally, the house doesn't have much space. It is on a crawl with no storage space.

Holly inquired how the renovation would remedy the drainage problem. Gary Roberts, builder for the petitioner, stated the garage would be raised so it will drain away from it.

Nechal stated if they change the definition of what the rear yard would be, they would still need a variance. Martin agreed that is correct.

Menuck asked what an average size two car garage is. Roberts estimated a minimum would be 21 feet.

Chairman Storrie explained the petitioner needs to layout a practical difficulty and explained the requirements of that. He doesn't see how this would prevent the petitioner from using the property. He suggested some lesser options for building without a variance or a lesser variance.

Jarbou stated the house is not functional by today's standards. It is burdensome, a dangerous situation. She is a single woman and safety is an issue. She needs an attached garage.

Menuck explained the current house is conforming and suggested remodeling by going up and building an attached one car garage with storage above. Martin added the petitioner has 14'-15', with no breeze way, to attach a garage. Jarbou stated she didn't want to build in a disconnecting way.

Chairman Storrie opened the meeting to the public.

Eric Wiegand requested the board make an exception. He would hate to see the garage left the way it is. He has witnessed the drainage problems which hold at least 6" of water in it. He feels it is very dangerous.

Roberts added Skip and Betty Barach and all the other neighbors are in agreement with the proposed plans. Also, Bill Piontkowski submitted a letter for the board, in favor of the variance.

Russ Meskin suggested putting an awning up from the breeze way to the garage.

Nechal asked how many other corner lots are similar, any uniqueness. Martin stated the size is typical and it depends on how the house is situated on the lot. If this wasn't a corner lot there would be room for a garage at the back of the house. He explained this property is unique because of the existing construction and how it is situated.

There were no other comments.

Moved by Menuck, seconded Galacz, to not approve the variance as submitted because there are not exceptional or peculiar circumstances or conditions applicable to the property that do not apply generally to other properties in the area or the city, specifically corner lots of similar size to other corner lots in the city. The variance is not necessary for the preservation and enjoyment of the substantial property rights assessed by other properties in the same district or the surrounding area. It is not a conditional situation which is a general or recurrent in nature of the area for the following reason: it is not an unusual size for corner lots in the area.

Yes: Menuck, Holly

No: Nechal, Storrie, Galacz

Storrie feels there is some evidence of uniqueness existing and how the house is situated. There is some evidence with regards to the flooding that substantial property rights maybe impeded. He feels a lesser variance is appropriate.

Menuck doesn't want to negotiate the plan. She suggested possibly tabling the hearing so the petitioner can redraw and present a revised plan. She feels there are ways to fix the drainage with a new garage.

Moved by Menuck, seconded Galacz, to table the variance for 2360 Ferndale, to May 14, 2008, at 6:30 p.m. Petitioner is to provide alternate plans for a lesser variance.

Yes: Holly, Nechal, Storrie, Galacz, Menuck

No: None

MOTION CARRIED

VARIANCE REQUEST

Z-002-08

Property: 2635 Orchard Lake Road
Petitioner: Joseph Volpe, Jr.
Zoning Ordinance Sections: 78-88(7) Use Variance

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant a use variance from the zoning ordinance to allow light automobile repair and tire sales in a C-1 zoning district.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Storrie opened the hearing. Proof of mailings and required proof of application are in file.

City Attorney Bibeau rendered an opinion as to the authority of the Zoning Board of Appeals to grant use variances in light of the current code language and the requirements of the recently enacted Michigan Zoning Enabling Act (PA 110 of 2006). It is his opinion they do not have the authority to grant a use variance or act on this request. They have the option to hear the variance and they can deny it because they cannot grant it. He stated the City Planners, McKenna, has also come to this same conclusion.

Jennifer Hill, attorney for the petitioner, stated she is aware of the issue from speaking with City Attorney Bibeau, but she does not have a copy of the opinion. Bibeau stated he would get her a copy. Hill would like some motion to be made to deny the variance because the board has no power to grant the variance.

The board discussed whether they should even listen to the case for the variance request. They agreed to follow the City Attorney's opinion and take no action. They deferred to the petitioner as to what they wanted to do. Hill requested a motion from the board stating they don't have the power to hear the variance. Bibeau clarified, they can hear the request, but they don't have the power to grant the variance.

Nechal questioned, if they should table the variance until the ordinance is changed. Attorney Bibeau explained in order for the ordinance to be changed, the Planning Commission would have to hold a public hearing and then decide if they want to recommend the change and then City Council would have to approve the change. This would like a minimum of 60 days.

Moved by Nechal, seconded Storrie, to request the Planning Commission to strongly consider amending the ordinance to allow the Zoning Board of Appeals to consider and grant use variances.

Yes: All
No: None

MOTION CARRIED

Martin clarified if City Council ends up agreeing with this motion, the petitioner would have to present their request again. Storrie added it would be unnecessary to have the petitioner present their case at this time. The board discussed whether they should table the variance.

Hill stated, she is ok with the board's position and feels it doesn't need to be tabled. There is no need to present their case. She stated they do not object to paying the \$300 for a new appeal.

Menuck asked to discuss the time in which hearings are held. Martin stated each variance request is set based on the amount of time he thinks is needed for the board to hear and discuss the petition.

Bibeau clarified, in light of the discussion, the variance for 2635 Orchard Lake Road, use variance, the board came to the consensus, after discussion, and agreed with the City Attorney's opinion that the board has no legal authority to grant use variances. Therefore, the board was not going to entertain this application. The applicants attorney, Jennifer Hill, understood the boards wasn't making any kind of ruling on the merits and indicated that they are willing to come back and pay the variance fee again.

ADJOURNMENT

Moved by Nechal seconded Galacz, to adjourn the meeting.

Yes: All

No: None

MOTION CARRIED

The meeting adjourned at 7:04 p.m.

Nicole Menuck, Secretary

Dennise Clippert, City Clerk