

CITY OF SYLVAN LAKE
ZONING BOARD OF APPEALS
NOVEMBER 8, 2006

A Meeting of the Zoning Board of Appeals, was held on Wednesday, November 8, 2006, opening at 6:34 p.m. at the Sylvan Lake Lutheran Church, 2399 Figa, West Bloomfield Twp., with Chairman Nechal presiding.

Present: Rob Galacz, Dave MacGillis, Nicole Menuck, Jerry Nechal,
Scot Storrie
Absent: None
Also Present: City Manager Martin and Clerk Clippert

APPROVAL OF AGENDA

Moved by Storrie, seconded Galacz, to approve the Zoning Board of Appeals Agenda for November 8, 2006, as presented.

Yes: All
No: None

MOTION CARRIED

APPROVAL OF MINUTES

Moved by Storrie, seconded MacGillis, to approve the following minutes as submitted:

October 11, 2006, Organization Meeting
October 19, 2006, Special Meeting

Yes: All
No: None

MOTION CARRIED

VARIANCE REQUESTS

Z-013-06

Property: 1483 Rosedale
Petitioner: Hazel Holly
Zoning Ordinance Sections: Sec 78-296 p. CD78: 55, Front Yard Setback

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 to allow the extension of a covered front porch at 1483 Rosedale.

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 Nechal opened the hearing.

Martin explained the zoning ordinance requires a residence to be at least 30 feet from the front property line. The existing front porch is 20.4 feet from the front property line (an existing non-conforming structure). The petitioner is proposing to extend the existing covered front porch to the side, approximately seven feet. The front yard setback will remain the same at 20.4 feet, requiring a variance of 9.6 feet.

Martin also explained Section 78-113(1) Nonconforming Structures, states that nonconforming structures cannot be enlarged or altered in a way that increases their nonconformity.

Nechal reminded the board a practical difficulty is needed for approval.

Petitioner Hazel Holly stated she would like to add the porch onto the side of the house because of the way the lot is situated and where the driveway is. It makes sense to have an entrance on that side, off the kitchen. It doesn't increase the nonconformity; it goes off to the side a little further. She has not had any objections from her neighbors. She noted most of the lot is on that side of the house and it would make sense to have a porch there to enjoy that part of the lot. The existing porch has been there since the house was built in 1935. She had her contractor there to answer questions they may have.

Menuck questioned the door and where it would go in and what the condition of the current porch structure is. Holly replied, the door would be in the addition on the side of the house. The builder stated they are going to re-shingle the entire roof and the structure is sound. Menuck also asked if guests use the driveway, would they enter the house through the side door. Holly agreed they would.

MacGillis asked Holly to provide the practical difficulty. Holly stated she is not adding to the nonconformity; she is not going closer to the street. Having an entrance there becomes the main focal point and if you don't connect the front porch to the side porch then another set of steps will have to be built and then she will constantly have to be going up and down steps. MacGillis informed her it can't be a self-imposed difficulty. He provided examples of a practical difficulty such as the house was built closer than the setback allows.

Menuck inquired if the owner could construct steps on the side with leaving everything as it is. Martin stated she could not put steps on either side.

Storrie further explained what the legal standard is for showing a practical difficulty. It would have to be shown that this would unreasonably prevent the use of the property for the permitted purpose. Holly replied, it is unnecessarily burdensome, to her, to have a porch cut off where that kitchen door would be and have to go up and down steps to do work around the yard.

Nechal provided the reality is that they are doing a modification to the house and they have to determine whether that is a practical difficulty or not.

MacGillis asked if there was anyway to make it come within the 30-foot setback. Martin stated 30 feet goes into the house as it is already.

Storrie inquired if she could make an entrance without a variance. Holly stated she could make an entrance, but it is not practical.

Holly's builder feels the practical difficulty can revolve around aesthetics. If this does not get approved, the look of the house when it gets altered maybe a hindrance on the property value to the other neighbors. He feels they need to look beyond the wording and look at the whole scope of this. He believes the practical difficulty is the existing non-conforming porch. It is an existing condition they are trying to deal with.

Galacz understanding of what the practical difficulty being stated is steps and aesthetics. Holly replied they are trying to make a cohesive plan that works.

Menuck asked if aesthetics play into a practical difficulty. Martin stated aesthetics and cost are not practical difficulties.

Chairman Nechal opened the hearing to the public.

Mike Easton, 2136 Pontiac, is the abutting neighbor and feels this is an improvement and it centers the house more on property. He feels it would make it better.

There were no other comments.

Moved by Storrie, seconded Menuck, to deny the variance at 1483 Rosedale. The petitioner failed to provide a practical difficulty, typically that the strict compliance with the zoning ordinance will not unreasonably prevent the use of the property for its permitted purpose. Also in enforcing the zoning ordinance as it doesn't appear to be unnecessarily burdensome.

Yes: MacGillis, Menuck, Nechal, Storrie, Galacz

No: None

VARIANCE DENIED

VARIANCE REQUEST

Z-014-06

Property: 2305 Cheltingham

Petitioner: Marguerite Davidson

Zoning Ordinance Sections: Sec 78-613 p. CD78: 83, Fence

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 to allow a fence to remain that has already been constructed at 2305 Cheltingham.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing, Chairman Nechal opened the hearing.

Martin reported the property is on the corner of Cheltingham and Inverness. There was a chain link fence which ran along the back and side of the property, up to the front. The ordinance states that you are not allowed a fence to extend closer to the front of the lot than the rear of the house. The chain link fence was replaced with a wrought-iron extend type fence. The applicant didn't realize you needed a permit to replace a fence. Martin clarified, only a zoning permit is needed, not a building permit. Martin acknowledged that Planning Commission has been discussing the fence ordinance for quite a while and this might be something they want to consider.

Menuck asked Martin if Planning Commission is really discussing this issue and if the discussion was corner lots versus regular lots. Martin stated it has been put on the back burner, but it is still on their agenda. The discussion for allowing a fence on a corner lot was to try to stop people from cutting across the property. The biggest hindrance was the requirement, for how tall, what type and how far out it should be allowed.

Nechal questioned if the petitioner's replacement fence extended any further than before. Martin replied, it is exactly as it was before. The prior fence was a nonconforming structure and the ordinance states you are not to encourage it to stay or replace it.

Petitioner Marguerite Davidson noted she has always pulled a permit for all the work she has done on this home. She just didn't realize when replacing the fence, she would need a permit. She did read the ordinance and didn't interpret that a permit was needed. The chain link fence that was there was 30+ years old. It was in serious need of repair. Her contractor did try to repair the fence but was unable to. They used the same postholes and placed the new fence in the exact location as was the chain link fence. Last year someone backed into the fence.

Galacz asked the petitioner if they removed the supporting posts. Davidson acknowledged they did, but they used the same foundation. The only different thing is the height is shortened and it is a different material.

MacGillis questioned how much of the new fence, in the back running up to Inverness, is restricting the dogs from going from backyard to backyard. Davidson replied, none.

Nechal inquired as to how long this tear down and replacement took. Davidson replied, about a week. It took a day or two to remove the fence and then later in the week they install the other one. About two weeks after Davidson received a citation at her house. She stated she immediately went to City Hall to get a permit.

Menuck asked if anyone from City Hall contacted her when the fence was going up. Davidson said no.

Chairman Nechal opened the hearing to the public.

Jeff Wexler, 1710 Inverness, abuts this property and noted the fence was falling down. Their dogs were cutting the noses on the broken links.

Sally Chestnut, 2398 Pontiac Drive, asked if the ordinance was ever revised and asked if she would be grandfathered in. Martin stated she is grandfathered in, but no changes can be made to it without coming into compliance. She could repair it, but once you remove it you have to comply. He reported the fence ordinance has been changed twice that he knows of.

Stuart Bandalene, 2460 Renfrew, questioned if this variance is approved if he would also have to come for a variance. Nechal replied, anyone who is requesting something that is non-conforming would have to come before the Zoning Board of Appeals.

There were no other comments.

Galacz reviewed Martin's comments on sending this issue back to the Planning Commission for review.

Storrie feels they should deal with the variance now and then ask Planning Commission to review again. Nechal agreed they should act on the case as presented.

Martin informed the board they can table the variance request, but the petitioner cannot withdraw the petition because they are still in violation.

Storrie asked what happens if they deny the variance and then Planning Commission recommends a change to the ordinance. Martin stated, they can deny the variance with a time frame that the fence has to be removed.

The board discussed the time frame.

Moved by Storrie, seconded MacGillis, to deny the variance at 2305 Cheltenham because the petitioner failed to show a practical difficulty. The petitioner failed to show the enforcement of the ordinance would unreasonably prevent the use of the property for its permitted purpose. She has further failed to show the necessity and it is apparent without getting a zoning permit first, she created this problem for herself. In light of the fact that Planning Commission is still discussing this, the variance is denied, but grant the petitioner until the date of March 7, 2007 to remove the fence and to try to resolve this issue with the Planning Commission and City Council. Barring an amendment to the ordinance allowing the fence to stand, the fence would have to be removed by that date.

Yes: Menuck, Nechal, Storrie, Galacz, MacGillis

No: None

VARIANCE DENIED

VARIANCE REQUEST

Property: 2635 Orchard Lake Road
Petitioner: JRE Tire
Zoning Ordinance Sections: Sec 78-496 Use Variance

Martin reported JRE Tire has withdrawn their petition. They had a tenant that wanted to put in a lighter use than the current zoning would allow. He had two requests, one was the use variance and he was also asking that it be placed on the Planning Commission s agenda for rezoning. The tenant has withdrawn their option to lease the property. The owner is still going to pursue the rezoning of the property.

ADJOURNMENT

Moved by Storrie, seconded Galacz, to adjourn the meeting.

Yes: All
No: None

MOTION CARRIED

The meeting adjourned at 7:35 p.m.

Scot Storrie, Secretary

Dennise Clippert, City Clerk