

**VILLAGE OF FRANKLIN
SIGN BOARD OF APPEALS
ZONING BOARD OF APPEALS
REGULAR MEETING
THURSDAY, NOVEMBER 14, 2019 at 7:00 P.M.
At the Franklin Village Hall
32325 Franklin Road, Franklin, MI**

I. MEETING CALLED TO ORDER

The Regular Meeting of the Zoning/Sign Board of Appeals was called to order by Randy Brakeman, Chairman, at the Franklin Village Hall, Franklin, Michigan at 7:00 P.M.

II. ROLL CALL

Present: Randy Brakeman, J. Bennet Donaldson, Fred Gallasch, Linda Hiller Novak, Bruce Kueck, Dean Moenck
Absent: Bill Couger
Also Present: Bill Dinnan, Building Official; Eileen Pulker, Village Clerk

III. ADOPTION OF AGENDA

Motion by Moenck, seconded by Gallasch to adopt the Agenda for the November 14, 2019 Regular Zoning/Sign Board of Appeals meeting, as presented and published.

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Brakeman explained the normal procedures and the purpose of the Zoning/Sign Board of Appeals.

IV. NEW BUSINESS

A. Case: #19-03
Property: 27231 W. 14 Mile, Franklin, Michigan
Parcel: 24-06-102-006
Zoning: R--2

Description of Proposed Request: The appellant is requesting that the Zoning Board of Appeals grant a variance regarding an accessory building reconstruction (garage) as follows:

The Village of Franklin Ordinances being the Chapter 1268, Appendix B, Schedule of Regulations, zoning district R-2, Section 1268.13,

1. (b) a 10 foot setback rear lot line is allowed. The plans indicate a rear lot line setback of 5.8 feet, hence a violation of 4.2 feet.
2. (c) a maximum height 15 feet, plans scale (an estimated) 18 feet, a violation of 3 feet.

Dinnan explained the existing structure on site was existing non-conforming, which was currently at 5.8 feet from the rear lot line. Any addition or any change to the structure would need to meet the required setback of the current Ordinance, that being 10 feet. The other violation was the height requirement to the Zoning Ordinance, which had been modified several years ago to be calculated by the highest point of the accessory building.

Andy Nelson, owner of the property, explained that the original 35-40 year old garage, which did not conform to the setback requirement, had a rotting roof and was beyond repair. Because of the overall disrepair of the original structure, he decided to take it down. What he did not know was that a replacement garage and height requirement needed to conform to the current Ordinances. He thought the garage structure on the same footprint would be “grandfathered” in and he needed the rear setback for extra storage space in the garage. He admitted to the mistake about the height requirement and would modify the trusses and conform to the Ordinance.

Nelson said he had spoken with neighbors about the height of the new structure and agreed to lower it three (3) feet.

According to Dinnan, this action was pursuant to an inquiry and complaint from a neighbor. Dinnan visited the site and found that work was being done and the applicant had not applied for a building permit. Dinnan explained the Ordinance dealing with a non-conforming structure. Alternative solutions to the problems were suggested.

Public Comments

There were no comments made at the meeting.

The Zoning Board of Appeals made the following Findings of Facts with respect to the request for an accessory building reconstruction (garage) at 27231 W. 14 Mile Road:

1. The Property address is 27231 W. 14 Mile Rd.
2. The Parcel ID is 24-06-102-006.
3. The Zoning is R-2.
4. There were three (3) negative letters, one (1) neutral letter, and one (1) non-committal letter from the neighbors, which have been submitted to the Village Clerk.

Dinnan could not verify if the accessory building was a living quarter as it was only permitted for storage. The owner confirmed there was a bathroom in the structure and his son had lived there for a while; however, two years ago his son moved out. It was now being used for storage only.

5. The required setback for the garage is 10 ft.
6. The footprint of the original building was existing non-confirming; however, the applicant removed a substantial portion of the structure.
7. More than 50% of the original structure was removed.
8. Removal of the original structure was done without a permit.
9. The owner is a builder who has done other projects in Franklin.

The owner has agreed to comply with the 15 ft. maximum height for the garage, thereby withdrawing the violation of a 3 ft. height variance.

10. There is a violation of the rear lot line lot line setback by 4.2 ft.
11. There was additional space on the property to extend the garage without a request for a setback variance.
12. The roof direction of the proposed structure has changed from the original east-west orientation to a north-south orientation.
13. The same homeowner built an accessory building on the property with a permit in August 2013.

Motion by Moenck, seconded by Kueck to close the Findings of Facts.

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Motion by Moenck, seconded by Kueck that the Board members consider the Proposed Findings of Facts for Case #19-03, with respect to the request for a variance regarding an accessory building reconstruction (garage) at the house at 27231 W. 14 Mile Rd., and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate by saying “Aye” and if you do not believe that the proposed Findings of Fact are appropriate for making a decision you should vote “No”.

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Motion by Moenck, seconded by Kueck that each member of the ZBA approve the variance as requested for Case #19-03, Item #1, based on the approved Findings of Facts, for 27231 W. 14 Mile Road and of the Applicant’s request for a variance of 4.2 ft. for a rear lot line setback regarding an accessory building reconstruction (garage), he should vote “Aye” and if he does not believe the facts support the variance, he should vote “Nay”. Item #2 has been withdrawn from the application.

Dinnan explained that an “aye” vote would be denying the variance. A “no” vote would be granting it.

Moenck amended his motion.

Motion by Moenck, seconded by Kueck that each member of the ZBA deny Item # 1 of the Applicant’s request of a variance of 4.2 ft. for a rear lot line setback regarding an accessory building reconstruction (garage), based on the approved Findings of Facts for Case #19-03, 27231 W. 14 Mile Road, he should vote “Aye” and if he does not believe the facts support the variance, he should vote “Nay”. Item #2 (c) has been withdrawn from the application.

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

- B. Case: #19-04**
Property: 30850 Cheviot Hills, Franklin, Michigan
Parcel 24-08-102-001
Zoning: R--1
Description of Proposed Request: The appellant is requesting that the Zoning Board of Appeals grant a variance regarding a fence replacement, as follows:

The Village of Franklin Ordinances being Chapter 1268, Appendix B. Schedule of Regulation, Zoning district R-1, Section 1268.28,

1. (b) (4) limits height to 48 inches.
2. (b) (5) A limits fences to rear and side yards. Yards that abut a street restricts fences in the required setback area from that street. In this case it is a minimum of 50 feet from the property line.
3. (c) (3) requires a maximum of 40 percent opacity.
4. (d) (2) privacy screens are not allowed to be located in required yard setback (50 feet).

Dinnan explained in detail the specific violations. This application was pursuant to an existing fence, which was in “complete” disrepair, taken down by the owner, and a replacement fence put up. If a fence is taken down, the replacement needs to comply with the Ordinance requirements. Earlier this year he sent numerous letters to the applicant indicating that the fence needed to be addressed. Unfortunately, the Village needed to take the applicant to court to address this issue. There is a court hearing; however, it is premised on how and what the ZBA was going to handle this situation.

Iwona Villaire, owner of the property, has lived in the house for sixteen (16) years. She explained that the fence has constantly been a problem. She has four (4) children, a dog, and a swimming pool behind that fence. The fence was for the safety of all. About six (6) years ago she replaced a portion of the fence and about two and a half (2 1/2) years ago her landscaper indicated that he could fix the fence for her. It turned out he did not pull a permit and now is no longer living in this country any more. She did get the notices and called the office requesting what she could do but never received a return call. She is a single mother with a very demanding job and four (4) children. She went to court and came to this meeting for guidance.

Dinnan added that the pool had been there prior to 1974, which pre-existed the fence ordinance. However, any fence replacement needed to comply with the current ordinance.

Brakeman confirmed that two (2) sides of the fence were wood and the other two (2) were wrought iron. Villaire provided photographs of the fence when she and her family moved in and stressed that the location of the rebuilt fence was the same as the original.

Moenck pointed out the issues with houses with two (2) front yards. Brakeman clarified there were two (2) issues to consider: the material of the fence and the location of the fence.

Public Comments

There were no comments made at the meeting.

Dinnan led a discussion about the opacity of fences adding that he was never provided any plans to review. Therefore, as stated in his review and denial sheet, his statements were based on his knowledge of the fence as viewed from the street.

Brakeman clarified that the pool was pre-existing and non-conforming of the ordinances and within the 50 ft. setback. However, the opacity of the new fence needed to comply with the ordinances.

The Zoning Board of Appeals made the following Findings of Facts with respect to the request of a variance for a fence replacement at 30850 Cheviot Hills:

1. The Property address is 30850 Cheviot Hills.
2. The Zoning is R-1.
3. The Parcel ID is 24-08-102-001.
4. The existing swimming pool pre-dates the fence ordinance and is within the 50 ft. setback area.
5. The Village Ordinance requires the fence around it to be 48 inches at the maximum.
6. The fence requirement is a maximum of 40 percent opacity.
7. The eastern fence, running north-south, and the southern fence, running east-west are wrought iron construction.
8. The wood portion of the fence exceeds the height requirement as does the opacity and is in the street setback area which is not permitted.
9. The current fence is a replacement of a fence in the same position with the same height and opacity.
10. The corner lot which differentiates it by having two (2) front yards with two (2) front yards setbacks.
11. The Village Clerk has not received any comments or letters.

Motion by Moenck, seconded by Kueck that the Board members consider the Proposed Findings of Facts for Case #19-04, with respect to the request for a variance regarding a fence replacement at the house at 30850 Cheviot Hills and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate by saying “Aye” and if you do not believe that the proposed Findings of Fact are appropriate for making a decision you should vote “Nay”.

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Brakeman proposed the Board consider and vote on the four (4) items individually and vote on them accordingly. He suggested that the pool area be addressed as a separate entity.

Regarding the height limits, Dinnan reminded the Board that he did not have the exact height of the fence and, therefore, could not give the Board an exact denial. However, based on the evidence of photos presented at this meeting, it appeared that the height did not meet the 48 inch limit. If the Board wanted to make a motion to approve the fence and its current location, it would be without the height. Dinnan provided some background information on this issue.

Motion by Moenck, seconded by Kueck that each member of the ZBA deny the variance of the height of the fence replacement requested based on the approved Findings of Facts, for 30850 Cheviot Hills, due to the uncertainty of the existing fence height, he should vote “Aye” and if he does not believe the facts support the variance, he should vote “Nay”.

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Motion by Moenck, seconded by Gallasch that each member of the ZBA approve the Applicant's request of a variance for a replacement fence to be placed on the exact same line where it presently exists which is within the 50 feet setback from the property line based on the approved Findings of Facts, for 30850 Cheviot Hills, he should vote "Aye" and if he does not believe the facts support the variance, he should vote "Nay".

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Motion by Moenck, seconded by Kueck that each member of the ZBA deny the Applicant's request of a variance of the 40 percent opacity of the fence based on the Findings of Facts, for 30850 Cheviot Hills, he should vote "Aye" and if he does not believe the facts support the variance, he should vote "Nay".

Ayes: Brakeman, Donaldson, Gallasch, Novak, Kueck, Moenck
Absent: Couger
Nays: None
Motion carried.

Dinnan explained that due to the last vote the request for a variance for a privacy screen was now mute.

(8:50 P.M. Gallasch left.)

C. Case: #19-05
Property: 30860 Hickory Lane, Franklin, Michigan
Parcel: 24 08 177 003
Zoning: R-1
Description of Proposed Request: The appellant is requesting that the Zoning Board of Appeals grant a variance for a fence replacement as follows:

The Village of Franklin Ordinances being the Chapter 1268, Appendix B, Schedule of Regulations, Zoning district R-1, Section 1268.28, (d) (2) privacy screens are not allowed to be located in a required yard setback (40 feet).

Dinnan presented this case explaining the request was to replace an existing privacy screen around a pool which was within the rear yard setback of 40 ft. He detailed the site plan indicating the location of the requested screen would be the same as the original one. Pictures of the existing fence and the proposed fence were also included. In this case, the fence has not been removed; however, it was his opinion that the fence was in disrepair.

Bradley Rocca, representing the owner, presented larger pictures of the fence and a letter of approval from a neighbor whose property abuts the fence. The owner, who was present, did not know when the fence had been built and stated they had only lived there for five (5) years. It was determined that the house was built in the 1960's which indicated the fence pre-dated the privacy screen ordinance and, therefore, would make it an existing, non-conforming fence. Rocca stated the plan was to replicate the

identical fence in the same location. Using these facts Dinnan indicated this request would be for the replacement of an existing non-conforming screen because the original one could not be repaired.

The Zoning Board of Appeals made the following Findings of Facts with respect to the request for a variance for a fence replacement at 30860 Hickory Lane:

1. The Property address is 30860 Hickory Lane.
2. The Zoning is R-1.
3. The Parcel ID is 24-08-177-003.
4. One letter from a neighbor is in favor of approving the variance.
5. The pre-existing pool and cement surrounding it are partially in the setback area which is allowed, however, a privacy screen in the same area is not.
6. The Applicant is requesting the replacement of an existing wood fence that has no opacity and is 6 ft. in height.
7. The existing fence was taken down by a storm, weather, and age.
8. The pool has been in that location in access of 20 years, therefore, pre-dates the fence ordinance.
9. The state laws require a minimum 48-inch fence surrounding a pool, which is the Village's maximum.

Motion by Kueck, seconded by Moenck to close the Findings of Facts for a fence replacement at 30860 Hickory Lane.

Ayes: Brakeman, Donaldson, Novak, Kueck, Moenck
Absent: Couger, Gallasch
Nays: None
Motion carried.

Motion by Moenck, seconded by Donaldson that each member of the ZBA deny the Applicant's request for a variance of a re-construction of a privacy screen within the 40 foot setback, based on the approved Findings of Facts, for 30860 Hickory Lane, he should vote "Aye" and if he does not believe the facts support the variance, he should vote "Nay".

Ayes: Brakeman, Donaldson, Novak, Kueck, Moenck
Absent: Couger, Gallasch
Nays: None
Motion carried.

V. APPROVAL OF MINUTES:

A. August 15, 2019

Motion by Moenck, seconded by Donaldson to approve the minutes of August 15, 2019 ZBA meeting as presented.

Ayes: Brakeman, Donaldson, Novak, Kueck, Moenck
Absent: Couger, Gallasch
Nays: None
Motion carried.

VI. ADJOURNMENT

Motion by Donaldson, seconded by Kueck to adjourn the meeting.

Aye: Brakeman, Donaldson, Novak, Kueck, Moenck

Absent: Couger, Gallasch

Nays: None

Motion carried.

There being no further business the meeting was adjourned at 9:20 P.M.

Respectfully submitted,

Gail Beke, Recording Secretary

Eileen H. Pulker, Clerk