

**VILLAGE OF FRANKLIN
ZONING BOARD OF APPEALS**

**Minutes of Meeting
September 20, 2012**

I. CALLED TO ORDER

The Regular Meeting of the Zoning Board of Appeals was called to order by J. Hailey, Chairman, at the Franklin Village Hall, Franklin, Michigan at 7:30 PM.

II. ROLL CALL

Present: Bill Couger, Sam Dabich, J. Hailey, Dean Moenck, Joe Roisman
Absent: Randy Brakeman, Harold Stein
Also Present: Eileen Pulker, Village Clerk; Bill Dinnan, Building Official.

Hailey explained the normal procedures for the Zoning Board of Appeals.

III. ADOPTION OF AGENDA

Motion by Hailey, supported by Moenck to approve the Agenda for the September 20, 2012 regular ZBA meeting as presented and published.

Ayes: Couger, Dabich, Hailey, Moenck, Roisman

Nays: None

Absent: Brakeman, Stein

Motion carried.

IV. NEW BUSINESS

A. Case: #12-04

Appellant: Wes Gillette, Gillette Brothers Pool & Spa

Property: 31090 Nottingham

Parcel ID: 24 05 353 003

Zoning: R-E

Description of Proposed Request:

The Appellant is requesting that a variance be granted for the installation of a chain link pool fence subject to the following:

1. Franklin Village Ordinance Section 1268.28(b)(2)(A) which states that chain link fences are prohibited.

Building Official Bill Dinnan presented the case to the Zoning Board of Appeals as follows: The Appellant is requesting a variance for the installation of a chain link fence which is in the rear yard, a portion of which surrounds a pool, subject to the following Ordinance Section 1268.28(b)(2)(A) which states that chain link fences are prohibited. The Zoning Board of Appeals has dealt with other chain link fences but not necessarily in regards to pools, but rather for uses around tennis courts or other sports courts. The ordinance has been revised to allow for minimal vinyl-coated chain link fences for such uses.

Couger clarified that the fence is already installed and it transitions outside the wooded area into a more traditional pool-type fence which is acceptable. Dinnan explained that a pool permit, which explains that a fence is required, was pulled but an application for the fence was not. The fence is the required 4 ft. in height.

Harry Wasvery, the owner of the property, addressed the Zoning Board of Appeals. Wes Gillette, the pool contractor, who has built other pools in Franklin, stated that he sub-contracted out for the pool. Gillette added that as for the fence, he usually has the homeowner deal with it. When the pool permit was pulled the statement that chain link fences are prohibited was overlooked. Decorative fencing was placed in the open areas and black vinyl fencing was installed in the heavily wooded areas.

Public Comments:

There were no public comments at the meeting, however, the Village Clerk indicated that the Village Office had received some letters. Moenck read off the names of residents who had voiced their opposing opinions: Alan and Sarah Krauss (Nottingham), Marvin Gordon (Hersheyvale), Milton and Eunice Ring (River). Voicing a favorable opinion was Don Brundirks (Nottingham). Bob McNeal (pool contractor) made some comments concerning the procedures of applying for a pool permit in Franklin.

Hailey closed the Public Comments.

Dinnan reviewed the file for this particular property and stated that in it is a signed pool application permit dated 4/10/2011, and a letter stating that a separate fence permit is to be applied for per the ordinance which was signed by the contractor on 05/04/2011. Due to this oversight, and another incident which is also being addressed at this meeting, administrative procedures have been changed so that a pool permit will not be issued until a fence permit has been applied for and approved.

Motion by Moenck, supported by Dabich, for The Zoning Board of Appeals to consider the following Findings of Facts with respect of a variance for the installation of a chain link fence, subject to the Ordinance as stated by the Building Official.

1. Case #12-04, 31090 Nottingham, Parcel ID: 24 05 353 003, Zoning: R-E
2. Appellant, Harry Wasvery, is requesting a variance to install a chain link fence rather than following Franklin's Ordinance Section 1268.28(b)(2)(A) which states that chain link fences are prohibited.
3. The fence is already installed without a permit.
4. Three (3) written correspondences have been received against the granting of the variance and one (1) in support of the variance.
5. The appellant stated that he was not aware of the fence ordinance requirement but the contractor has signed and dated the condition sheet which clearly states the requirement (attachment #1).
6. It is a perimeter fence and is a combination of a pool fence that is acceptable and then as it transitions into the woods it becomes a chain link fence.
7. The acceptable part of the fence is made out of approved and allowable material under the ordinance.
8. The appellant failed to follow procedure.

Motion by Hailey, supported by Roisman, that each member of the Zoning Board of Appeals consider the proposed Findings of Fact, and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate this 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: Couger, Dabich, Hailey, Moenck, Roisman

Nays: None

Absent: Brakeman, Stein

Motion carried.

Motion by Hailey, supported by Moenck, that each member of the Zoning Board of Appeals, using the approved Findings of Fact, consider the facts, and if you believe the facts warrant approval of the Appellant's request for the variance for the installation of a chain link fence, one should vote "aye" and if one does not believe the facts support the variance one should vote "nay".

Ayes: None

Nays: Couger, Dabich, Hailey, Moenck, Roisman

Absent: Brakeman, Stein

Motion is defeated. Variance is not granted.

B. Case: #12-05

Appellant: Bjorn Mader
Property: 26040 German Mill
Parcel ID: 24 06 226 041
Zoning: R-1

Description of Proposed Request:

The Appellant is requesting that the Zoning Board of Appeals grant a variance for two (2) seasonal collector vehicles to be allowed in the driveway during warm season in addition to regular vehicles as stated below:

1. Franklin Village Ordinance Section 1268.14(e)(5) which states that not more than three (3) vehicles, licensed and operable, may be parked on an approved driveway. The Appellant is requesting a variance to allow for four (4) vehicles to be parked in the driveway.

Building Official Bill Dinnan presented the case to the Zoning Board of Appeals as follows: The Appellant is requesting a variance of the Zoning Ordinance to allow him to park four (4) cars in his driveway.

Mr. Mader, owner of the property, addressed the Zoning Board of Appeals stating that from 9am to 8 pm there are only 3 cars on the property, with Sundays and Mondays the only days for which there are there four (4) cars. Mader mentioned the typographical error in the original June ZBA notice stating five (5) cars, which subsequently had been corrected. Mader mentioned that other houses in the Village have more than three (3) cars parked in the driveway at one time and suggested the Village look at other situations.

Hailey asked where he kept his classic cars during the winter. Mader stated that the vehicles are in storage in Grass Lake from October 1 to the end of April. Economic times have prevented him from building the 4- car garage that he had originally planned. Mader further explained that at the present time there is no garage or basement, thus making storage extremely difficult. Roisman asked if he had any of the cars before he bought the house. Mader answered affirmatively.

Public Comments:

Matthies Meyer, Franklin Rd., opined that Mr. Mader has been singled out in this matter. Meyer added that he felt that the neighborhood must not be aware of this ordinance because numerous neighbors are violating it on a regular basis or maybe the ordinance is not being enforced across the board. With the times changing and children having their own vehicles, there will be more cars in the driveways. Meyer further opined that this ordinance needs to be changed.

Hailey explained that the Zoning Board of Appeals cannot change the ordinance; only the Planning Commission and the Village Council can.

Meyer asked Dinnan to clarify the ordinance's definition of "parked". Hailey replied that the Zoning Board of Appeals has the right to interpret the ordinance and they would interpret it as a normal word, "parked". It means a car is parked. The ordinance was not written with a time limit.

Meyer made a request that if the appellant is not granted the variance he would like this ordinance be looked into by the appropriate body and to possibly rewrite it to fit into today's environment.

The Village Clerk indicated that the Village Office received five (5) written comments opposing the request for the variance: Julie Ashbaugh (German Mill), Chris and Maureen Rich (German Mill), John and Jacqlyn Rokicki (German Mill), Milton and Eunice Ring (River Dr.), Pat Burke (Franklin Ct.)

Hailey closed the Public Comments.

The Zoning Board of Appeals made the following Findings of Facts with respect to the request for a variance for two (2) seasonal collector vehicles to be allowed in the driveway during warm weather in addition to regular vehicles as stated below which will require a variance subject to the Ordinance as stated by the Building Official:

1. Case #12-05, 26040 German Mill in the Historic District, Parcel ID# 24 06 226 041, Zoning: R-1.
2. The Appellant (Bjorn Mader) is requesting a variance to allow for two (2) seasonal collector vehicles to be parked in the driveway during warm season, in addition to regular vehicles for a total of four (4) vehicles in the driveway.
3. The Ordinance, Section 1268.14 (e)(5) states that not more than three (3) vehicles, licensed and operable, may be parked on an approved driveway.
4. It is an irregularly shaped lot with no garage.
5. Five (5) public comments in opposition have been submitted to the Village Clerk.
6. The appellant received a letter from the Historic District Commission in Feb. 2007 stating its approval of the site plan for 26040 German Mill as provided on the submitted plan.
7. There are photos showing the improvements made to the house and yard.
8. The appellant provided photos of the two (2) classic cars which are the impetus for the variance request.
9. During the winter season the appellant stores the vehicles in a storage unit of his choice.
10. One (1) resident who also lives in the Historic District as well as a neighbor living on Franklin Road spoke very strongly in favor of granting the variance.
11. The Village Building Official did propose a conditional variance if the Zoning Board of Appeals did consider approving the request of the variance.

Motion by Hailey, supported by Couger, that each member of the Zoning Board of Appeals consider the proposed Findings of Fact, and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate this 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: Couger, Dabich, Hailey, Moenck, Roisman

Nays: None

Absent: Brakeman, Stein

Motion carried.

Motion by Hailey, supported by Roisman, that each member of the Zoning Board of Appeals, using the approved Findings of Fact, consider the facts, and if you believe the facts warrant approval of the Appellant's request for the variance to allow for two (2) seasonal collector vehicles to be parked in the driveway during warm season, in addition to two (2) regular vehicles, one should vote "aye" and if one does not believe the facts support the variance one should vote "nay".

Ayes: None

Nays: Couger, Dabich, Hailey, Moenck, Roisman

Absent: Brakeman, Stein

Motion is defeated. Variance is not granted.

C. Case: #12-06

Appellant: Lauren and Howard Potocsky

Property: 26720 Captain's Lane

Parcel ID: 24 06 127 005

Zoning: R-1

Description of Proposed Request:

The Appellant is requesting that the ZBA to grant a variance for the installation of a chain link fence subject to the following:

1. Franklin Village Ordinance Section 1268.28(b)(2)(A) which states that chain link fences are prohibited.

Building Official Bill Dinnan presented the case to the ZBA as follows: The Appellant is requesting a variance for the installation of a chain link fence (pool fence) which is in the rear yard.

Lauren and Howard Potocsky, owners of the property, explained that the landscaper installed the fence and that they, personally, were not aware of Franklin's ordinance that does not allow chain link fences. The fence they had installed is of good quality, black powder coated aluminum chain link fence in a wooded area. Anderson Brothers built the pool; Bob McNeil is their contractor. The fence was installed after the pool was built.

Couger clarified that the decorative fence is along the side yards can be seen from the street and then it transitions into the chain link around the periphery in the wooded area. Moenck questioned whether they had built the pool and then had the landscaper build the fence. Dinnan explained that he issues the pool permit and part of the pool permit states that a separate fence permit is required per the Village Ordinance.

There is no pool fence just a perimeter fence on the property.

Public Comments:

Bernie Dufour, Captains Lane, is a neighbor and has no issue with the fence. The fence cannot be seen from the road or from his house. It is in a heavily foliaged area, black in color, and professionally installed.

Bill Meade, Captains Lane, also a neighbor, is very impressed with the improvements the Potocsky's have made to the property.

Hailey closed the Public Comments.

There were two (2) letters (Bernie Dufour, Captains Lane and Matthew Sosin, Captains Lane) received by the Village Clerk in favor of granting the variance and one (1) (Pat Burke, Franklin Ct.) opposed.

Dinnan reviewed the file for this particular property and stated that in it is a signed pool application permit and a statement stating that a separate fence permit is to be applied for per Ordinance 1268.28 (b)(2)(A) which was signed by Robert McNeil and dated 8/10/2011.

Motion by Hailey, supported by Couger, for The Zoning Board of Appeals to consider the following Findings of Facts with respect of a variance for the installation of a chain link fence, subject to the Ordinance as stated by the Building Official.

1. CASE #12-06, 26720 CAPTAINS LANE, PARCEL ID: 24 05 353 003, ZONING: R-1
2. Appellants (Lauren and Howard Potocsky) are requesting a variance to install a chain link fence rather than following Franklin's Ordinance Section 1268.28(b)(2)(A) which states that chain link fences are prohibited.

3. Appellants weren't personally aware of the fence ordinance requirement but a party representing the owners did sign and date the condition sheet which lays out the requirement (attachment #2).
4. The fence is already installed.
5. The fence is well within the vegetation and not very visible but it is non-conforming.
6. Two neighbors spoke in favor of granting the variance. One letter also in favor and one letter opposed.

Motion by Hailey, supported by Moenck, that each member of the Zoning Board of Appeals consider the proposed Findings of Fact, and if you believe a decision regarding this variance request should be made using the above Findings of Fact indicate this 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: Couger, Dabich, Hailey, Moenck, Roisman

Nays: None

Absent: Brakeman, Stein

Motion by Hailey, supported by Dabich, that each member of the Zoning Board of Appeals, using the approved Findings of Fact, consider the facts, and if you believe the facts warrant approval of the Appellants' request for the variance for the installation of a chain link pool fence, one should vote "aye" and if one does not believe the facts support the variance one should vote "nay".

Ayes: None

Nays: Couger, Dabich, Hailey, Moenck, Roisman

Absent: Brakeman, Stein

Motion is defeated. Variance is not granted

D. APPROVAL OF MINUTES: APRIL 25, 2012

Motion by Couger, supported by Moenck, to approve the minutes of the regular ZBA meeting of April 25, 2012 as submitted.

Ayes: Couger, Dabich, Hailey, Moenck, Roisman

Nays: None

Absent: Brakeman, Stein

Motion carried.

E. ADJOURNMENT

There being no further business, by unanimous agreement, the meeting adjourned at 9:15 P.M.

Respectfully submitted,

Gail Beke, Recording Secretary

Eileen H. Pulker, Clerk

Attachment #1

ATTACHMENT #2

