

Draft: September 18, 2007

Village of Bingham Farms
Zoning Board of Appeals
September 17, 2007

Approved: October 22, 2007

The regular meeting of the Zoning Board of Appeals was called to order by President Bauer at 7:00 p.m.

Present: Bauer, Ettenson, Kesley, Leckie, Gollnitz & Tripp (7:37 p.m.)

Absent: Freeman

Also Present: Hagaman, & McDermott

Agenda

Motion by Leckie , second by Gollnitz to approve the Agenda as presented.

Motion carried.

Minutes

Motion by Ettenson , second by Leckie to approve the meeting minutes of August 27, 2007 as submitted.

Motion carried.

2007-02 Setback Variance's (30029 Bristol Ln.)

Chair Bauer indicated that this is a continuation of the Variance Request first discussed at the August 27th ZBA. It was tabled at the applicant's request.

Mr. Leckie commented that this meeting is to address the conditions for a variance and not the landscape plan.

Mr. Dovre summarized the conditions for a non-use variance as amended in 2005. The applicant must meet five conditions for a variance. The major difference is that an applicant must establish a practical difficulty rather than a hardship. He also stated that in his opinion the Village ordinance does comply with state law

Mr. Rabinovitz questioned whether his client, Mr. Lasser even needed a variance as the issues under consideration are landscape features and not structures. He also questioned whether the items under review are considered accessory structures.

Mr. Dovre read the definitions of structures and accessory structures from the ordinance, specifically Sections 157.05 (B)(2), Sections 157.050 and 157.07 (A). It is his opinion the need for a variance is required. There is no question that the items under discussion are structures.

Mr. Ettenson indicated that the correspondence from Mr. Lasser received September 14, 2007 wherein Mr. Lasser spoke of a compromise and asked specifically what elements would be subject to a compromise. He also questioned what practical difficulty the applicant has.

Mr. Rabinovitz indicated that it is impossible for Mr. Lasser to create a French garden in the rear due to the topography in the rear, specifically the drop off down to the river. During the past month, Mr. Lasser has taken steps to tone down the pergola by painting it to blend with the house. Plants have been added to show how the formal features will be screened from the road.

Mr. Lasser added that the steps he has taken is an attempt to provide a natural landscape at the road while providing screening from the road. He initially planted arborvitae screening around the property, but has eliminated that in favor of conifers, hemlocks and other plantings. He is willing to relocate the pergola back towards the house to reduce the encroachment into the front yard setback. He is willing to work with the Design Review Board.

Chair Bauer opened discussion to the public.

Thomas Pulte, builder and friend of the applicant came to provide his opinion as a builder. Bristol Ln. is an eclectic area. He has built backyard ponds and large fountains in front yards. He believes the landscaping on this property will improve the value of the home and adds character to it. The project is in proportion to the size of the property.

Roger VanWeelden, 29975 Bristol Ln., stated that there is no hardship relative to the variance request. There is no place in the community with similar landscaping. He will not oppose the project as long as he does not have to see it. He is upset that Mr. Lasser did not secure the proper approvals prior to beginning construction. He is concerned that if Mr. Lasser does not secure approvals he will litigate it for years. Given this consideration, he requests that conditions be placed on any approvals requiring continual upkeep of the plantings.

Chair Bauer indicated that the ZBA will only make a decision on whether a variance should be granted, not on the landscaping proposal. Pending action of the ZBA, Mr. Lasser will still have to get other necessary approvals and permits.

D.E. Hagaman , 32671 Bingham Ln., was speaking as the Vice Chair of the Planning Commission and a member of the Design Review Board. Village ordinance prohibits structures in the front yard and side yard setbacks The Master Plan addresses the character of Bristol Ln. as homes with ample setbacks, a country-like ambiance, and with natural vegetation.

There is no hardship encountered by the applicant. Mr. Lasser has a garden and koi ponds in the rear. The house sits on over 2 acres of land and there is ample areas in the back where a garden can be place. Consideration would have to be given to areas that are within a floodplain. Granting a variance will make it very difficult for the Design Review Board to maintain the character of the Village.

Dick Holloway, 32721 Bingham Lane, is concerned about the precedent this would set. The applicant has full use of the property. Having a pond in the front yard raises several safety issues. He encourages the ZBA to follow the ordinance, which establishes the front and side yard setbacks and prohibits structures in the front yard.

He does not feel the applicant has met any of the criteria for granting a variance and the problem has been self-created. It is nice to be neighborly, but it should also be legal.

Karl Ochadleus, 23033 Bristol Ct., raised several issues with the Master Plan and with the Design Review Board. He supports Mr. Lasser's right to use his property.

Jeff DuComb, 30153 Bristol Ln, stated that it is far better looking at property that is well maintained. He has a problem with lawns not cut, mailboxes in disrepair and fallen trees not removed. The Village should address these issues too.

Walt & Chris Rygiel, 2978 Bristol Ln, love the neighborhood, the woods and the trees. They see no problem with the request.

Michele Dodman, 23033 Bristol Ct. understands what Mr. Lasser wants to do but it should be done within the law. She encourages people to become familiar with the procedures of the Village and be willing to work with the various Boards. She asked that the Village protect the neighborhood by ensuring maintenance of the property in perpetuity.

Harrell Scarcello (23865 Overlook) stated that she is the Chair of the DRB. The village is a great place to live because of its unique character. Creating the Master Plan was a lengthy process and it provides guidelines to maintain that character. The Master Plan references Bristol Lane as an area with generous setbacks. The plans before the ZBA are not in keeping with the "country look" as described in the Master Plan. It has no historic charm, it is very ornate and over wrought in design. There are those residents in the Village that follow proper procedures. It is not right for others to sail through without following those procedures.

Mr. Lasser responded that he did not feel that what he was doing would be considered structures as defined in the ordinance. The ordinance references decks, garages and sheds. He is putting in garden structures. He believed he was not violating any ordinances.

Chair Bauer again stated that the ZBA is considering the request for a variance, not approval of what is constructed in that space. It is a different issue.

Mr. Ettenson indicated that a simple phone call to the Village could easily avoid problems such as this. It appears that the ZBA can either deny the variance or consider what affect any lesser variance might have.

Discussion continued on definitions of structures, accessory structures etc. It is referenced in Mr. Lasser's variance request that there are properties within the village that allegedly have structures in the front yard that may also be in violation of the Village ordinance. Mr. Dove indicated that the Village Clerk has not had an opportunity to investigate these allegations. The Village does not routinely drive the Village looking for violations, but uses a complaint as the basis to investigate. Mr. Lasser's submittal will be considered a complaint.

Mr. Kesley offered a motion to deny Variance Request 2007-02 as the applicant has not established that he is suffering a practical difficulty for the following reasons:

- the applicant has not established that he is suffering a hardship because of the zoning regulations nor that compliance with the strict letter of the ordinance would unreasonably prevent the use of the property
- the applicant has not established that his hardship is unique and due to circumstances peculiar to the property
- the applicant has not established the proposed variance will not alter the essential character of the surrounding property, and in fact, if the French formal garden is used as intended, it would change the character of the neighborhood
- the applicant has not established that even with a grant of the variance, substantial justice will be done because the variance is not needed for the exercise of a substantial property right
- the applicant has not established that the need for the variance is not self-created because the property is able to be and is in fact being used as zoned and intended.

Mr. Dovre requested that before a second to the motion be offered, that the ZBA consider going into closed session to discuss the privileged/confidential attorney/client communication from his associate Ms. Kolb in that some of the issues raised in that motion may not meet the required standards of the Zoning Enabling Act.

Motion by Tripp, second by Ettenson to enter into closed session to discuss the Attorney/Client Privileged communication dated August 23, 2007.

Roll call vote.

Motion passes 6-0.

The ZBA entered into closed session at 8:10 p.m.

The regular meeting of the ZBA reconvened at 8:25 p.m.

Mr. Kesley withdrew his previous motion.

Mr. Dovre stated that since the applicant has indicated a willingness to work with the DRB on the proposed landscape plans, the ZBA has the option to postpone a decision to provide the applicant with the opportunity to prepare revised plans to review by the DRB. The concern was raised that it might put the DRB in a difficult position to review plans that may still need variances.

Mr. Dovre indicated that the ZBA can request the DRB to review the plans on the premise that variances would be granted.

Motion by Tripp, second by Gollnitz is postpone further discussion on this variance request until October 22nd at 7:00 p.m. to give the applicant the opportunity to revise his plans showing a new placement of the trellis and eliminating as many variances as possible and further that the revised plans be placed on the Agenda for the November 5, DRB meeting. The DRB is requested to act on those plans on the assumption that any remaining variances would be granted by the ZBA
Motion carried.

In summary of the status of the variance request, the ZBA agreed that if no plans were submitted by Mr. Lasser for review by the DRB at their November meeting prior to the next ZBA meeting, the ZBA will act on the appeal at hand. If the revised plans require some variances, the request would be on the next ZBA agenda.

It was also stated that the applicant will be requested to provide a legal document regarding the required screening and long-term maintenance requirements and said document to be recorded with the Oakland County Registrar of Deeds.

There being no other business to conduct, the Chair Bauer adjourned the meeting at 8:32 p.m.