

Draft: November 27, 2007

Village of Bingham Farms
Zoning Board of Appeals
November 26, 2007

Approved: December 17, 2007

The regular meeting of the Zoning Board of Appeals was called to order by Chairperson Bauer at 7:15 p.m.

Present: Bauer, Ettenson, Kesley, Leckie, Gollnitz & Tripp

Absent: Freeman

Also Present: Hagaman, & McDermott

Chair Bauer read the Rules & Regulations for Meeting Efficiency that would be in effect for this meeting.

Agenda

Motion by Ettenson, second by Gollnitz to approve the Agenda as submitted.

Motion carried.

Minutes

Motion by Ettenson, second by Leckie to approve the meeting minutes of September 17, 2007 as submitted.

Motion carried.

Appeal 2007-02 Setback Variances - 30029 Bristol Ln.

Mr. Dovre, attorney for the Village, summarized the status of the appeal and addressed the November 16, 2007 position paper the applicant filed with the Village relative to the Appeal and DRB decision.

Mr. Dovre outlined the variances requested per the November 16, 2007 position paper based on the new plan submitted.

Front yard variances:

Koi Pond- 45'

Fountain/Waterfall – 45'

Pavers (west) – 10'

Pavers/patio (E) w/ fire pit – 48.3'

Arbor – 2.5'

Side yard variances:

Pavers (west) – 12.3'

Pavers/patio (east) w/ fire pit – 5'

Mr. Dovre indicated that before discussion could ensue on the variances requested, two issues require clarification as to which sections of the Zoning Ordinance the Zoning Board would be ruling under; Section 157.007 relative to yard encroachments or Section 157.050 F relative to minimum setback requirements.

The ZBA should first determine whether the items outlined above are structures for purposes of the zoning ordinance setback requirements and the need for variances.

Mr. Rabinovitz argued that the structures do not need a variance as they are not for occupancy or use. They are landscape features. The plans call for substantial screening which affords the natural or country like features identified in the Master Plan.

Mr. Lasser argued that the proposed structures are not considered an accessory structure as described in Sections 157.007 or 157.050. The fountains and arbor are not like a deck.

Mr. Dovre argued that the ordinance specifically defines what a structure is. That definition includes pavers, decks, patios etc.

Mr. D. E. Hagaman (32671 Bingham Ln. & DRB member) stated that Mr. Lasser is requesting the structures as part of his desire to create a formal French garden. In researching formal French gardens, he did not find any with a waterfall or koi ponds. French gardens are made of plantings arranged in formal geometric shapes. The Village ordinance prohibits any structures in the required front yard setback. The DRB approved several structures that were not in that required front yard setback. The arbor was approved except for the 2' encroachment into the front yard setback. The plans do not fit with the Master Plan, which identifies Bristol Ln. as having a country-type setting.

Mrs. Freedman (32535 Bingham Rd. & DRB member) stated that the DRB did not want to see structures in the front yard. Screening of the structures does not eliminate the encroachment. It is not in keeping with the character of the Village.

Discussion followed on screening. Mr. Dovre explained that at this time the ZBA was discussing zoning issues and not the DRB decision.

Motion by Kesley, second by Ettenson that all the items identified are considered structures for purposes of the zoning ordinance and the need for variances.
Motion carried.

Discussion followed on whether the variances needed would be for only the structures above ground (Section 157.007) or for all the items the ZBA has determined to be structures (Section 157.050).

Motion by Kesley to apply Section 157.050 for all structures.
Motion failed to obtain a second.

Motion by Tripp, second by Gollnitz to apply Section 157.007 in determining the variance requests.
Motion carried 4-1 (Kesley opposing). Chair did not vote.

Based on the Board's Motion to apply Section 157.007, Mr. Dovre indicated that the variances required under the new plans would be Front yard setbacks for the fountain (45 feet) and arbor (2.5 feet). The applicant confirmed that if those variances were approved, the other variance requests based on the original (old) plan would be withdrawn and that conditions requiring landscaping on the most current plan and the recording of a maintenance agreement with the register of deeds were acceptable.

Motion by Tripp, second by Gollnitz to approve the variance request for the front yard setbacks as follows: 45' setback variance for the fountain/waterfall and a 2.5' setback variance for the arbor based on the new plans showing all other structures in the required front and side yard setbacks being at grade (not above ground). Said variances are conditioned upon the landscape screening being installed per the new grading and landscape plans, the landscaping being maintained in perpetuity and a maintenance agreement enforceable by the Village being signed by the applicant and recorded with the Register of Deeds.

Motion carried 4-1 with Kesley opposing. The Chair did not vote.

Mr. Kesley indicated that in his opinion, the applicant has not established any practical difficulty nor met any of the conditions for receiving setback variances.

Appeal DRB Decision (30029 Bristol Ln)

The Chair opened discussion on the decisions of the DRB at their December 3 meeting whereby Mr. Lasser requested approval of the structures as presented in the plans submitted to the ZBA.

Mr. VanWeelden (29975 Bristol Ln.) stated that he would not oppose the structures if there was sufficient screening installed to block his view. A new issue has arisen in that he can hear the pumps operating the waterfall and he objects to this. The waterfall is working and the screening is not completely installed yet. What recourse does he have if Mr. Lasser or subsequent owners do not maintain the screening?

Mr. Valiquett (32810 Bingham Ln. & DRB member) stated that the koi pond is like a swimming pool and he has several concerns allowing such structures in the front yard. The ordinances have been established to restrict such encroachments. If the DRB findings are overruled, it opens the door to anything and everything being allowed, including play structures, swimming pools etc.

Mr. Hatt (24138 Bingham Pte. & DRB member) stated that the waterfall is a substantial structure. It is more than 4-ft. high with three tiers.

Motion by Kesley, second by Tripp to modify the DRB decision which approved certain of the landscape features but allow the koi pond, waterfall and trellis extension conditioned that all landscaping be satisfactorily completed

Discussion followed over the installation of horse heads at the driveway entrance to the main garden and lighting, which were not included on the plan submitted. Mr. Lasser indicated that the horse heads were not visible from the street.

Mr. Kesley and Mrs. Tripp agreed to amend the motion to include approval of the horse heads and add a further condition that no lighting be installed without approval of the Design Review Board.

The full motion reads:

Motion by Kesley, second by Tripp to modify the DRB decision which approved certain of the landscape features but modify said decision to allow the koi pond, waterfall and trellis extension conditioned that all landscaping be satisfactorily completed and that the fountain will not be operated until all the arborvitae on the south side of the fountain is installed, no later than 5/31/08. A separate lighting plan is to be submitted to and approved by the Design Review

Board prior to installation of any lighting and installation of two horse heads shall be at the portion of the driveway entrance to the main garden and shall not be visible from the street. Motion carried. Chair did not vote.

Chair Bauer addressed a concern over the depth of the koi pond. Mr. Dovre indicated that the property owner assumes all liability. State law does not require fencing around water that is not meant for human immersion.

There being no other business to conduct, Chair Bauer closed the meeting at 8:40 p.m.