

Draft: August 28, 2007

Village of Bingham Farms  
Zoning Board of Appeals  
August 27, 2007

Approved: September 17, 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

Absent: Freeman

Also Present: Attorney Kristin Kolb, Hagaman, & McDermott

### **Agenda**

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

Motion carried.

### **Minutes**

Motion by Leckie, second by Tripp to approve the meeting minutes of June 25, 2007 as submitted.

Motion carried.

### **Appeal 2007-02 (30029 Bristol Ln.)**

Clerk Hagaman read the "Rules for Meeting Efficiency" that would be followed. The conditions for granting a variance were also read per Sect. 157.023 (E1).

Chair Bauer stated that the notice for this meeting has been published and sent to property owners within 1,000 feet of the property under discussion.

Mr. Steven Rabinovitz, attorney for Mr. Lasser, addressed the Board. He provided the Board with a packet containing letters from residents who were in support of the applicant's request for a formal French garden to be constructed in the front yard.

Mr. Rabinovitz indicated that the topography of this particular parcel of land makes it difficult for his client to construct a formal French garden in the rear. The rear property consists of a steep slope to the Rouge River. The inclusion of a waterfall, koi pond and pergola were all considered landscape features, not structure. The waterfall provides a filtration system to prevent the pond from becoming a breeding ground for mosquitoes. Mr. Lasser's desire is to enhance his property and provide him privacy. He plans to screen the front with evergreen plantings and large trees to obscure the garden from the road.

Only after beginning the project, did Mr. Lasser learn that elements of the project were considered structures as defined in the Village ordinance and that a variance would be required. The neighbors have asked that the garden be screened from view and Mr. Lasser has agreed to comply with that request.

Mr. Leckie questioned how this project meets the conditions to grant a variance.

Mr. Rabinovitz indicated that the garden cannot be placed in the rear yard due to the steep drop-off. There is not sufficient room for this type of garden at the bottom of the slope.

Mr. Leckie indicated that Mr. Lasser already has a large garden with ponds in the rear.

Chair Bauer questioned what the variance request is. It appears that the original proposal has been changed. Mr. Lasser responded that the color rendering included in the variance packet includes changes requested by the neighbors. He has included Bradford Pear trees with other evergreen trees placed strategically to screen the garden from street view. He indicated that he has shown the rendering to many neighbors who do not object to his plans.

Chair Bauer questioned how Mr. Lasser's project meets the criteria necessary for a variance. The information provided does not establish hardship and the plans presented will alter the essential character of the neighborhood. The applicant has gardens in his backyard, so the question remains what is the hardship?

Margaret VanWeelden (29975 Bristol Ln) explained that she and her husband reviewed the comprehensive plans and their request is to have the gardens appropriately screened in an attractive manner so it is not visible from their property.

D.E. Hagaman (32671 Bingham Ln.) stated that he is a member of both the Planning Commission and liaison from the Commission to the Design Review Board. He is not representing either entity but rather as a member. The proposed plans encroach on both the front and side setbacks. The design elements do not comply with the Village's Master Plan. The design is crowded and is not in keeping with the country-like look of Bristol Ln.

Margaret Van Camp (22905 Bristol Ln.) stated that the Master Plan provides guidelines only. Mr. Lasser has a French-style home and the proposed formal garden is in keeping with that style home. The gardens will be hidden from view at the road with trees. If the neighbors are in support of the project, the Board should take that into consideration.

Paul Ozment (30013 Bristol Ln.) explained that many of the rear lots on Bristol Ln., although having acreage, have deep drop-offs down to the river and much of the land is in a floodplain. There are federal requirements relative to use within the floodplains.

Karl Ochadleus (23003 Bristol Ct.) stated that the Village is concerned about curb appeal. He agrees with Mrs. VanCamp if the landscaping is screened, it should not be a problem.

Jeff DuComb (30135 Bristol Ln) stated the Village should not have a problem as long as the property is well maintained. It will look fine.

Michelle Dodman (23003 Bristol Ct.) indicated she has read the Master Plan and it has a lot of suggestions, not rules and laws. When an entity places restrictions and prohibitions, it makes it difficult for people to work with the system. She defends a property owner's right to use his property as he wishes.

Dick Holloway (32711 Bingham Ln.) stated that he tours the village routinely as a member of Mobile Watch and sees this property often. The Design Review Board was formed many years ago to protect the Village from inharmonious structures and protect its natural features. The ordinance in relation to the Zoning Board of Appeals was last amended in 2005. Section 157.023(d) sets forth the guidelines for granting variances. The property in question is not unique, others share the same conditions and the zoning specifications allow him reasonable use. He encourages the ZBA to deny the request.

Terry Dugan (29775 Bristol Ln.) indicated support for the plan and the Village's right to challenge it. Since the property owner has agreed to screen it from view, then let him do it. It has to get done, sooner than later.

Dan Wiley (20725 Bristol Ln.) just wants this to get done. He agrees with the Village's rules, but the applicant's revised plan is nice. The pergola and ponds do stick out. Perhaps a different color of the pergola might make it less obvious. However, the property can't be left as it is.

Chair Bauer thanked the participants and acknowledged the amount of expertise relative to landscaping but indicated that this Board was to rule on whether the applicant meets the condition for a variance, not on the merits of the landscape plans.

Mr. Earl Wolfe (23565 Old Orchard Tr.) stated that he is the Chairman of the Planning Commission. He takes exception to the fact that a property owner has decided to put up fancy structures in the front yard without permits or approved plans. He gets caught, then goes to his neighbors to get support. What is proposed here is a structure and it is in the front yard. The variance should be denied

Mr. Rabinovitz indicated that there is a fine line between what may be considered a structure and a landscaping feature. The applicant is trying to get approval of the plan and would like to reach a compromise.

Mr. Kesley indicated that he has difficulty understanding how the applicant is suffering a hardship and that he cannot put the property to reasonable use. Mr. Rabinovitz stated that his client is trying to enhance the design of his home and can only do it in the front yard since the rear yard cannot accommodate a formal garden. Therefore he is not able to put the property to reasonable use.

Chair Bauer read into the record portions of written documents from the Design Review Board Chairperson, Harrell Scarcello and from property owner Camille Fath.

Mrs. Scarcello expressed concern that the proposed landscape is formal and not in keeping with the Village's country characteristics nor with the required setbacks. The plans are anything but discreet. The homes on Bristol Ln. are set far back with primarily large open spaces. The plan is congested and the applicant is trying to put too many elements in a small space.

The letter from Dr. & Mrs. Fath, who own two lots south of the property under discussion, object to the plans in that these are structures and they are encroaching on both the front and side setbacks. They also question the safety of having a deep koi pond in the front yard.

Discussion ensued on the safety issue of the pond. Mrs. Hagaman clarified for the Board that state law mandates pond and pool enclosures if these elements are meant for human immersion. While the koi pond is deep enough to require fencing, it does not fall under the state requirements as it is not meant for human immersion.

Attorney Kolb clarified that the Zoning Board is not charged with approving the plans for the French garden, they are only considering whether there is sufficient reason to grant a variance for the proposed structures.

Mr. Rabinovitz requested that a short recess be taken so he could speak with his client.

The Board agreed to the request at 7:51 p.m.

The meeting reconvened at 7:52 p.m.

Mr. Kesley requested that the applicant address why he is not able to put his property to reasonable use. Mr. Rabinovitz responded that the 100-ft. setback requirement limits his client's ability to have any formal garden in the front yard.

Mr. Kesley questioned why the garden could not be placed in the rear yard. Mr. Rabinovitz responded that the rear yard was not conducive to a formal garden due to the topography.

Chair Bauer indicated this issue has come before the Board because no permits or approvals were secured prior to the start of construction. The Village was advised of the project through an anonymous call. This evening, several suggestions are being made which change the plans that are before the Board and at this point, there is no concrete plan to discuss.

Mr. Kesley questioned what percentage of the property would become impervious with the proposed landscape. This includes the walkways, ponds, pavers etc. Mr. Rabinovitz did not have this information.

After further discussion, Mr. Rabinovitz requested that the Board table the variance request to allow his client an opportunity to provide the Board with additional information.

Motion by Gollnitz, second by Kesley to table action on variance 2007-02 until a Zoning Board of Appeals meeting to be held on September 17, 2007 at 7:00 p.m.  
Motion carried.

There being no other business to conduct, the Chair closed the meeting at 8:06 p.m.