

**VILLAGE OF FRANKLIN
SIGN BOARD OF APPEALS
ZONING BOARD OF APPEALS
REGULAR MEETING
Thursday, October 20, 2016 at 7:00 P.M.
At the Franklin Village Hall
32325 Franklin Road, Franklin, MI**

Before the meeting, Eileen Pulker, Village Clerk, swore in Matthias Meyer for another term of three (3) years.

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, Bill Couger, Bruce Kueck, Matthias Meyer, Dean Moenck
Absent: J. Bennett Donaldson, Fred Gallasch
Also Present: Bill Dinnan, Building Official; Eileen Pulker, Village Clerk; Jim Creech, Village Administrator

III. ADOPTION OF AGENDA

Motion by Moenck, seconded by Meyer to adopt the Agenda for the October 20, 2016 Regular Zoning/Sign Board of Appeals meeting, as presented and published.

Ayes: Brakeman, Couger, Kueck, Meyer, Moenck

Absent: Donaldson, Gallasch

Nays: None

Motion carried.

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

IV. NEW BUSINESS

**A. Case: #16-07
Appellant: Jeffrey Cohen
Property: 31600 Briarcliff
Parcel: 24-05-304-005
Zoning: R-E**

Description of Proposed Request:

The Applicant is requesting that the Zoning Board of Appeals grant a variance regarding a lot split, as follows:

1. The appellant is requesting a lot split of the current lot which is defined as 146,631 square feet and complies with the Schedule of Regulations. Dividing this lot as proposed will create two non-conforming lots in size being 62,807 square feet facing Briarcliff which is in violation by 67,193 square feet. Further, the second lot facing Devon Road, Mountain View is proposed at 83,824 which will be in violation by 46,176 square feet.

2. Continuing, Section 1225.11(c) states that the new lots shall be buildable sites and shall conform to the minimum standards for the area, width and depth according to the zoning requirements for the district in which the lots are located.

Bill Dinnan, Building Official, presented the case to the ZBA, stating that the Village of Franklin Ordinances being the Schedule of Regulations, Appendix B, defines Zoning District R-E as having a Minimum Size of Lot to be 130,000 square feet. He noted this case has two (2) issues. If the #1 issue is denied, #2 issue need not be considered this evening. If #1 issue is approved, #2 must also be addressed and approved.

Moenck inquired and Dinnan explained why this issue had come to the Zoning Board and not the Planning Commission: this lot split did not conform to the Ordinance therefore non-conformity of an Ordinance is under the jurisdiction of the Zoning Board of Appeals for variances or allow ability. Dinnan continued to explain that if the split would be approved it would go before the Planning Commission for their recommendation which would then be referred to the Village Council.

Dinnan had some covenants for the Franklin Villas Subdivision, including a Deed Restriction a portion of which he quoted. He noted that three (3) lots had been divided but documentation showed that all forty-four (44) landowners had signed off on them, many years previously.

Alan Greene, Woodward Ave., Bloomfield Hills, attorney and friend representing Jeffrey Cohen, pointed out a few of the things included in the application: seeking a variance from a lot area, everything else complies with the RE zoning (road frontage requirement, the set back requirement, maximum lot coverage requirement). It is the largest lot in the subdivision and is the only one that fronts two (2) roads which makes it unique. The configuration of the lots on either side are similar to what Mr. Cohen is proposing in his application. He noted that of the approximately forty-four (44) lots in the sub, thirty-nine (39) were non-conforming (i.e., they don't meet the minimum lot size per the Zoning Ordinance) and five (5) were conforming, and two (2) are larger than this particular parcel. He compared the proposed lots with others in the R-E district stating that they would be consistent with the subdivision, the general neighborhood, and the lot lines on the side of the property.

Moenck inquired if there were any designated wetlands in the lot. Green confirmed there was but could not verify if they were "regulated". Kueck confirmed that the property had been owned by Cohen for approximately 10 years. Dinnan referred to the Wetlands map and found that the only regulated wetlands were on the vacated portion of Mountain View. He also stated that he could not verify any setbacks since he has not received any plans for development.

Julie Fershtman and Robert Bick, lot #23 Briarcliff, bought their home in July 1988 which is immediately north of the aforementioned property. She referred to the Nonuse Variance document by addressing the four (4) standards which would determine "practical difficulty" to such an extent as to warrant relief from the existing Ordinance. With each standard she explained how it did not pertain to this particular situation. Her final comment was that she and her husband asked that the ZBA observe, protect, and care for the spirit and letter of the existing Residential Estate Ordinance. She asked that ZBA keep these in mind when deliberating on the applicant's request.

Mira Stakhiv, Crestwood Dr., complimented Fershtman on her comments and expressed her concern about what she sees as an emerging pattern of requests for splitting lots and opined that the large properties are one of Franklin's appeals.

Jonathan and Sarah Jacobs, Devon Rd., residents for 18 years, addressed the issue of the wetlands with regards to the water drainage and how they (the wetlands) would be affected if the lot split is permitted. Mrs. Jacobs also related a personal antidote about the two (2) giant turtles which travel between the wetlands and the pond twice a year.

Steve Katzman, Devon Lane, lives next to the wetlands. He expressed his love for Franklin but he, too, is concerned about the possible drainage problems, among other things, if this request is granted.

Sarah Krauss, Nottingham Dr., stated that they had built their house in 1991 on a large lot due west of this particular lot. She mentioned the letter from the Brundirks (residents on Nottingham) to the ZBA who also oppose the variance request. She noted her concern that approving the variance might set a precedent. When making this decision she advised the Board members to really listen to what her neighbors say. This was paramount because this Village is very important to all of us.

Bob Blumberg, Mountain View, is adjacent to the property and stated his personal concern about the wetlands and drainage situation.

Jim Gannes, Canterbury Rd., stated that he has lived in Franklin his whole life. His property backs up to the property in question and noted that his view would be destroyed if the variance for a lot split is granted.

Brakeman noted that the ZBA had received 10 letters, all of which oppose the granting of the lot split, and asked that their names be added to the record, as follows:

1. Judy & Bernie Mindell, 25185 Franklin Park Drive.
2. J & Barbara Hailey, 31125 Briarcliff.
3. Mark Ohm & Jamie Loehrke, 31075 Briarcliff Road.
4. Scott Circus, 25090 Devon Lane.
5. Patricia & Donald Brundirks, 31450 Nottingham.
6. Sarah & Jonathan Jacobs, 25360 Devon.
7. Jeanie & Harry Tabor, 25430 Canterbury.
8. Gail & Paul Jacobs, 25330 Devon Lane.
9. Ronald Berris, 25435 Canterbury.
10. Arnold M. Jacob, 31920 Mountain View Road.

Pete Alshabkhoun, son of the current owners of the property directly across Briarcliff who had asked him to speak on their behalf regarding this issue. His parents are strongly against this split adding that "Precedence" and "the domino effect" are big concerns to them.

Dinnan had a copy of the wetlands map in Franklin. It showed that the wetlands which would impact this piece of property would be in an area within the old Mountain View right of way and is regulated by the Village and the DNR. He explained the topography of the property and the drainage path into the particular wetlands on the Mountain View side.

Moenck noted there were two (2) things to consider: wetlands and its drainage and Michigan property laws. Dinnan noted that the wetlands issues would require the Village engineer's review.

Jonathan Jacobs, Devon Lane, pointed out what constitutes a "wetlands" can change over the years. He suggested that this area be re-evaluated, however, this matter should not be part of the ZBA's scope of consideration. Dinnan read the definition of "wetlands" and opined that there is a need for documentation.

Alan Greene clarified some issues: regarding the wetlands, the lots are sizeable and construction can stay away from them; there is a misunderstanding about the size of these lots and the buildable areas in comparison to the neighboring properties; there is more than enough room to build a house on each proposed lot and maintain the vegetation and the wetlands and it is consistent with what is around; and regarding "precedence", according to his calculations there are only a few lots in the R-E zone that are large enough to be split and create and fit in the same character of the area.

Brakeman advised that a number of facts presented by the applicant and the members of the audience are accepted at face value. He also pointed out that there are guidelines which ZBA must follow and the decisions of the Zoning Board are based upon the information presented at this meeting. Also, members of the board do not have discussions before or after a meeting regarding an issue which has come before them, so there are no preconceived ideas or opinions. This is an open meeting for open discussions and an open decision based upon the facts.

Moenck clarified that a deed restriction is not a decision maker for the ZBA as it is part of the subdivision and not a Village issue. Dinnan explained that it is not an enforceable document by the Village itself, however, it has its place and is noted as part of the Facts. The enforceable part of it would be strictly upon the forty-four (44) people within the subdivision to actually enforce that particular document that says no lot can be split. Brakeman noted that those lots which were split pre-date the Zoning Ordinance. Dinnan outlined the process needed for Village approval: if ZBA approved the split, the Village Council being the governing authority would then have to approve it, after a review by the Planning Commission. At that point the subdivision or group of people who own lots that are listed within the deed restrictions would have to approve and enforce it. Enforcement would be through the civil courts.

The Zoning Board of Appeals made the following Findings of Facts with respect to the Request for a variance regarding a lot split:

1. The Property Address is 31600 Briarcliff.
2. The Parcel ID is 24-05-304-005.
3. The Zoning is R-E.
4. Location of the home is not in the Historic District.
5. The lot is conforming.
6. A lot split would create two (2) non-conforming lots.
7. The subdivision is named Franklin Villas subdivision, established in 1925.
8. After 1925 and prior to the current zoning authority there were several lot splits which received the approval of the majority of landowners.
9. There is a deed restriction in the subdivision when the subdivision was created in 1925.

10. The Zoning District, R-E, was established in the 1980's.
11. The current owner purchased this property in 2006 and the Ordinances were in effect and had been in effect for a long time and there were not many lot splits in that subdivision for a long period of time.
12. The wetlands that are on that property now, most of which were created by the abandonment of Mountain View which meant the property was attached to each of the lots on either side of the vacated road.
13. 11 letters were received by the Village opposing the lot split and 9 residents and neighbors spoke against it.
14. The requested variance for Lot 1 is 67,193 sq. feet and for Lot 2 is 46,176 sq. feet.
15. If there is a split, the front setback would be 50 ft. and the side setback would be 40 ft.

Brakeman stated that he had difficulty granting a variance which would create two (2) non-conforming lots.

Motion by Moenck, seconded by Meyer, that the Board members consider the Proposed Findings of Facts with respect to the request for a variance regarding a lot split at 31600 Briarcliff, 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 Facts are appropriate for making a decision you should vote "Nay".

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

Motion by Moenck, seconded by Meyer that each member of the ZBA approve the variance requested based on the approved Findings of Facts, for 31600 Briarcliff and of the Appellant's request for a variance regarding a lot split, he should vote "Aye" and if he does not believe the facts support the variance, he should vote "Nay".

Motion failed due to lack of support.

Motion by Moenck, seconded by Kueck that each member of the ZBA deny the variance requested based on the approved Findings of Facts, for 31600 Briarcliff and of the Appellant's request for a variance regarding a lot split, he should vote "Aye" and if he does not believe the facts support the variance, he should vote "Nay".

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

Dinnan stated that due to the denial of the first (1st) item, the second (2nd) item is moot.

V. APPROVAL OF MINUTES: July 21, 2016

Motion by Brakeman, seconded by Meyer to approve the minutes of July 21, 2016 ZBA meeting as presented.

Ayes: Brakeman, Couger, Kueck, Meyer, Moenck

Absent: Donaldson, Gallasch

Nays: None

Motion carried.

VI. ADJOURNMENT

Motion by Brakeman supported by Kueck to adjourn the meeting.

Ayes: Brakeman, Couger, Kueck, Meyer, Moenck

Absent: Donaldson, Gallasch

Nays: None

Motion carried.

There being no further business the meeting was adjourned at 8:25 P.M.

Respectfully submitted,

Gail Beke, Recording Secretary

Eileen H. Pulker, Clerk