



MINUTES

MEETING OF THE BOARD OF ZONING APPEALS

Thursday, May 2, 2024

6:30 PM

Village Hall – 21 East Church Street, Lake Orion, MI 48362

(248) 693-8391 ext. 102

1. Call to Order

The May 2nd, 2024 Board of Zoning Appeals Meeting was called to order at 6:30 PM.

2. Roll Call and Determination of Quorum

PRESENT

Chairperson Bradley Mathisen
Secretary Brenton Bailo
Member Mary Chayka-Crawford
Member Henry Lorant

ABSENT/EXCUSED

Vice Chairperson Raymond Putz

STAFF PRESENT

Village Planner Gage Belko
Village Clerk/Treasurer Sonja Stout
Deputy Clerk/Treasurer Lynsey Blough
Recording Secretary Mary Jo Pachla

QUORUM PRESENT.

3. Designation of Alternate

None.

4. Approval of Agenda

MOTION made by Member Lorant, Seconded by Member Chayka-Crawford to approve the May 2, 2024 Board of Zoning Appeals Agenda as presented.

VOTING YEA: Mathisen, Bailo, Chayka-Crawford, Lorant

VOTING NAY: None

ABSENT: Putz

MOTION: Carried

5. Approval of Minutes

MOTION made by Member Lorant, Seconded by Vice Chairperson Bailo to approve the February 1, 2024 Board of Zoning Appeals Minutes as presented.

VOTING YEA: Mathisen, Bailo, Chayka-Crawford, Lorant

VOTING NAY: None

ABSENT: Putz

MOTION: Carried

6. Public Comments on Non-Agenda Items Only

None.

7. Other Items

A. 136 Axford Dimensional Variance.

Chairperson Mathisen introduced this item and reviewed the order of presentation. He invited Planner Belko to present his report.

Mr. Belko noted that two variances were requested relative to a proposed above-ground pool for the rear yard. He explained that above-ground pools are subject to setback regulations in the Zoning Ordinance and must meet the setbacks of the primary structure, as well as meeting the overall lot coverage for the Village Single Family Residential District.

He reviewed the McKenna's letter dated April 25, 2024, and noted that the Board should find compliance with all five standards before determining practical difficulty. He explained the following:

- The pool is a permitted accessory use.
- The subject site is already nonconforming for area and width. There was a lot split approved in June of 2003 that created the small lot, but at the time it received the appropriate approvals.
- The lot is currently occupied by a one-story dwelling with an attached single-story two car garage. The recently-constructed deck is detached and complies with the Ordinance. He noted that in-ground pools are allowed to encroach into setbacks, and the overall lot

coverage could be brought into compliance by modifying the deck by 122 square feet. The fact that this might increase the cost is not a legitimate burden for the use of the property.

- While the approval would provide the applicant with substantial justice, it would not provide justice to the neighborhood. If similar circumstances are shared by nearby property owners, an ordinance amendment could be pursued, which is under the purview of the Planning Commission and Village Council.
- The requested variance is not the minimum possible. Lot coverage could be brought into compliance by a smaller deck.
- The lot was legally split in 2003, and the size and shape, although nonconforming, are not unique when compared to other properties in the District.
- Relative to the need for a variance being self-created, case law references the current and previous property owners. The Applicant constructed the deck, and the previous lot split rendered a lot too shallow in depth.
- The applicant must demonstrate that they can achieve all of these standards, and it is the finding that it would not be unnecessarily burdensome to comply with the Ordinance.

Secretary Bailo asked if they could do a pool with a smaller deck.

Planner Belko responded that the applicant has constructed a permitted deck, which is detached from the house. He noted that an in-ground pool can encroach into the setbacks and there are no ordinance standards that prohibit that.

Discussion ensued regarding detached structures and their setbacks. Planner Belko pointed out that swimming pools have their own standards, which state that above-ground pools must be in compliance with the principal structure setbacks. He added that patios and decks can encroach into the rear. He mentioned that by not affixing the deck to the home, it became a detached structure. He noted that a pool must not be more than eight inches above the surrounding grade otherwise it must comply with the principal structure setbacks.

Planner Belko presented the findings which were noted in McKenna's letter, noting that it is the Planner's recommendation to deny the variances.

Representing the Applicant at 136 N. Axford was Sue Overmyer, who stated she was the Applicant's mother. She stated that the hardship is relative to the size of the lot. She noted that the deck was designed on the lot to accommodate a pool that was given to the Applicant by his sister. She noted that even if the deck is removed and the pool placed close to the house, it would still need a variance. She stated that the pool would be a recreational/therapeutic accommodation. She commented that she did not know if they could afford to consider an in-ground pool, and the sister is an aquatic expert who would assist in managing the pool.

Member Lorant asked if a fence has been installed.

Ms. Overmyer responded that a six-foot fence was installed a year ago.

Chairperson Mathisen called for a motion to open the public hearing at 7:01 pm.

MOTION made by Secretary Bailo, Seconded by Member Lorant, to Open the Public Hearing.

VOTING YEA: Mathisen, Bailo, Chayka-Crawford, Lorant

VOTING NAY: None

ABSENT: Putz

MOTION: Carried

Seeing no one in attendance wishing to comment, Chairperson Mathisen called for a motion to close the public hearing at 7:02 pm.

MOTION made by Member Chayka-Crawford, Seconded by Member Lorant, to Close the Public Hearing.

VOTING YEA: Mathisen, Bailo, Chayka-Crawford, Lorant

VOTING NAY: None

ABSENT: Putz

MOTION: Carried

Planner Belko presented the Planner's Recommendation for denial of both variances.

The Board discussed whether nearby properties had any decks or accessory structures. Member Lorant pointed out that a garage can go all the way back, but a pool cannot.

Planner Belko noted that a Google aerial view showed that there were a number of decks in the neighborhood. He stressed that the Zoning Ordinance has separate regulations for pools.

Ms. Overmyer mentioned that their intent was to erect the pool early in summer and take it down in the fall.

MOTION made by Member Chayka-Crawford, Seconded by Chairperson Mathisen, to DENY both the variance of 15 feet from the required minimum rear setback and the variance of 1.95 percent from the required maximum lot coverage for the installation of an above-ground pool at 136 Axford.

VOTING YEA: Mathisen, Chayka-Crawford

VOTING NAY: Bailo, Lorant

ABSENT: Putz

MOTION: Failed

Planner Belko suggested each variance be considered separately.

MOTION made by Member Chayka-Crawford, Seconded by Chairperson Mathisen, to DENY the variance of 15 feet from the required minimum rear setback for the installation of an above-ground pool at 136 Axford.

VOTING YEA: Mathisen, Chayka-Crawford

VOTING NAY: Bailo, Lorant

ABSENT: Putz

MOTION: Failed

MOTION made by Member Chayka-Crawford, Seconded by Chairperson Mathisen, to DENY the variance of 1.95 percent from the maximum lot coverage for the installation of an above-ground pool at 136 Axford.

VOTING YEA: Mathisen, Chayka-Crawford
VOTING NAY: Bailo, Lorant
ABSENT: Putz
MOTION: Failed

The Board members discussed that while this is an attractive proposal, zoning applies and a variance is a variance. It was discussed that it would set a precedent for temporary pools to consider granting a variance with a timeline condition for removing it at the end of a season. It was questioned whether initiating a request to pursue an ordinance amendment should be considered.

Planner Belko noted that the motions have failed, and stated that the Board must arrive at a successful motion to either approve or deny. He stated that he would still recommend denying the variance before initiating an amendment request.

MOTION made by Secretary Bailo, Seconded by Member Lorant, to postpone this item until a full Board is present.

VOTING YEA: Mathisen, Bailo, Lorant
VOTING NAY: Chayka-Crawford
ABSENT: Putz
MOTION: Passed

Member Lorant asked if the applicants could speak with staff to see what they could do to reduce the variance request. Planner Belko stated that he would advocate to the Planning Commission in June that they pursue an Ordinance Amendment establishing different criteria for different types of pools. He suggested an amendment could be several months out.

He suggested amending/revising the motion to postpone to include the June 6 meeting date.

MOTION made by Secretary Bailo, Seconded by Member Lorant, to revise the previously passed motion and postpone this item until the June 6 meeting.

VOTING YEA: Mathisen, Bailo, Lorant
VOTING NAY: Chayka-Crawford
ABSENT: Putz
MOTION: Passed

8. Next Regular Meeting - June 6, 2024

9. Board Member Comments

None.

6. Adjournment

MOTION made by Member Lorant, Seconded by Chairperson Mathisen to adjourn the May 2, 2024 Board of Zoning Appeals Meeting.

VOTING YEA: Mathisen, Bailo, Chayka-Crawford, Lorant

VOTING NAY: None

ABSENT: Putz

MOTION: Carried

The May 2, 2024 Board of Zoning Appeals Meeting adjourned at 7:29 PM.

Dr. Brenton Bailo
Secretary

Sonja Stout
Village Clerk/Treasurer

Mary Jo Pachla
Recording Secretary

Lynsey Blough
Deputy Clerk/Treasurer

Date Approved: as presented June 6, 2024.