

City of Keego Harbor
ZONING BOARD OF APPEALS MEETING MINUTES
WEDNESDAY, FEBRUARY 28, 2018 7:00 PM
2025 Beechmont

CALL TO ORDER: Vice Chairman Bernstein called the meeting to order at 7:00 p.m.

ROLL CALL

PRESENT

Vice Chairman Stephen Bernstein, Commissioners David Emerling, Scott Balutowicz, John Fletcher and Brian Lampl.

Staff Present: City Planner Jason Smith, and City Manager Linda Voll.

NEW BUSINESS

Re: 1730 Cass Lake Front. ZBA 18-001: Request for a Use Variance: NR Neighborhood Residential District, Section 4.01 to allow a privately-owned park/recreational use within the Neighborhood Residential (NR) District which will include fencing on a lot without a principal building, landscaping, hardscape/walkways, and lighting. The Keego Harbor Zoning Ordinance does not permit a privately-owned park/recreational use within the NR District. Section 15.13(h) Accessory Buildings, Principal Building Required; to install new fencing on a lot without a principal building (house).

APPLICANT and PROPERTY OWNER: Applicant: Dr. Farideh R. Bagne

Owner: Same

PROPERTY DESCRIPTION:

1730 Cass Lake Front Street, Parcel # 18-02-276-004

ZONING CLASSIFICATION:

Subject Property: NR, Neighborhood Residential

Adjacent Properties: NR, Neighborhood Residential

Vice Chairman Bernstein disclosed; his home is within 300 feet of this property, and did receive a 300 ft. notice. Vice Chairman Bernstein does not feel that this would impact his decision.

MEETING OPEN TO THE FLOOR

No one addressed the Board Members, closed to the floor for comment.

City Planner Jason Smith read the listed below items.

REQUEST FOR USE VARIANCE:

Request for a Use Variance: NR Neighborhood Residential District, Section 4.01 to allow a privately-owned park/recreational use within the Neighborhood Residential (NR) District which will include fencing on a lot without a principal building, landscaping,

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hardscape/walkways, and lighting. The Keego Harbor Zoning Ordinance does not permit a privately-owned park/recreational use within the NR District. Section 15.13(h) Accessory Buildings, Principal Building Required; to install new fencing on a lot without a principal building (house).

Planner Smith explained the ZBA addresses two type of Variances; Use variance is what ZBA is addressing tonight (Applicant must show unnecessary hardship), and Dimensional Variance (on dimensional of a lot, applicant must show practical difficulties).

CLAIMED UNNECESSARY HARDSHIP:

(Use Variance) the applicant states:

1. The applicant states that there has been consistent trespassing and damages to her property as stated in Section B of the attachment supplied with the Zoning Board of Appeals Application.
2. The applicant states that she has no intention of building a single-family home on the lot in an effort to preserve the Lake and waterfront views.
3. The applicant states that some of the neighbors have not respected the existing property lines and the property has been used for parking, a construction staging, among other inappropriate and illegal uses.
4. The applicant states that efforts have been made to handle these matters in a civil manner, but these efforts were met with hostility from the trespassers.
5. The applicant states that due to the trespassing that occurs on the site that litter has become an ongoing issue.
6. The applicant states that issues with the adjacent property owner to the north have escalated and resulted in a law suit being filed in Oakland Court Circuit Court against some of the trespassers and relief was sought for the damages that have occurred on the subject site.
7. The applicant states that given the current zoning requirements there is no effective way for the applicant to protect the property from destructive and abusive trespassers. Efforts have been made to post "No Trespassing" signs. This method has not been effective according to the applicant.
8. The applicant states that approval of the use variance will assist in securing the property and providing a more aesthetically pleasing look opposed to a vacant lot.
9. Granting of a variance will allow neighbors who do not have Lake Frontage to enjoy the views of Cass Lake.
10. The applicant states that placement of a fence on and landscaping a vacant property has a precedent in the City of Keego Harbor. Sylvan Condominiums have a private lake front open space with a fence around the property, and a private garden area.

DEPARTMENT FINDINGS OF FACT:

1. The subject site is zoned NR, Neighborhood Residential.
2. The subject site is a residential waterfront lot along Cass Lake.
3. The current owner demolished a single-family home and two fences that were previously located on the subject parcel (Demolition permit was issued 11/21/16).
4. The subject parcel is currently vacant with no principal or accessory structures located on the lot.
5. Adjacent parcels to the north and south are developed (or being developed) as single-family residential.

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6. The applicant intends to allow private access to the property.
7. The proposed fence sections are not a permitted use on a vacant residential lot.
8. Maximum front yard fence height is 3-feet, must be 10 feet from road pavement and decorative, with a minimum of 50% open space).
9. Maximum waterfront yard fence height is 3 feet, must be 75 percent open to air and light, and no closer than the water's edge at a seawall, or in the absence of a seawall, five (5) feet from the ordinary high-water mark.
10. The existing lot size is approximately 13,467 square feet.
11. The frontage width along Cass Lake Front is 61 feet and the waterfront lot line is 52 feet.
12. The depth of the lot is approximately 240 feet+/-.
13. Existing lot is buildable, based on Section 4.08 of the Zoning Ordinance and is not unique when compared to other residential lots on the west wide of Cass Lake Front.
14. The north side lot line property owner (neighbor) could install their own conforming fence section along the proposed north lot line fence location.
15. The south side lot line property owner (neighbor) could install their own conforming fence section along the proposed south lot line fence location.
16. The Keego Harbor Master Plan has a Future Land Use designation for the subject site as "Waterfront Residential".
17. The City is aware of on-going issues that the applicant has had related to the construction on the adjacent site to the north. The City has stated that a certificate of occupancy will not be granted until the subject site is repaired.
18. A use variance was granted in November of 2016 at 2192 Park Circle (ZBA-16-009) for installation of a fence on a vacant property. In this case the subject property was not buildable.

Planner Smit explained to the ZBA members while listening to comments or making a determination pertaining to the case make sure you use these guidelines.

AUTHORIZATION:

Section 17.03(c) Use Variance

The ZBA shall have the authority in specific cases to authorize one or more variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. Such authority shall be exercised in accordance with the following standards:

1. A use variance shall not be granted unless the Zoning Board of Appeals finds, on the basis of substantial evidence presented by the applicant, that there is an unnecessary hardship in the way of carrying out the strict letter of this ordinance. In determining that an unnecessary hardship exists, the Zoning Board of Appeals must find that:
 - a) The property in question cannot be reasonably used or cannot yield a reasonable return on a prudent investment if the property would be used only for a purpose allowed in the zoning district.

Does not meet the standard. The existing lot is buildable, and a single-family home could reasonably be developed on the site. Given that the property has Lake Frontage, the applicant could yield a reasonable return on a prudent investment if developed as a single-family home or another principal permitted use identified for the Neighborhood Residential District.

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b. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.

Does not meet the standard. The zoning ordinance is designed to allow permitted principal uses in designated zoning districts and also to prevent fences around vacant lots. Additionally, the lot is buildable and many of the principal uses permitted identified within Section 4.01 of the Zoning Ordinance could reasonably be developed on this parcel.

c. The use to be authorized by the variance will not alter the essential character of the area and locality.

Somewhat meets the standard. The request being made is to allow a use (Privately-owned and operated park) that is currently not permitted within the NR District. A park, by nature could generally bring a positive impact to residential area. But, generally, these uses are public and available to all residents of a community. Depending on usage of the park, neighboring properties could see added pedestrian traffic adjacent to their homes which could have potential negative impacts to the residents.

The aesthetics of the proposal are certainly more desirable than a vacant lot, but in order to approve a use variance an unnecessary hardship needs to be demonstrated by the applicant.

d. The problem is not self-created.

Somewhat meets the standard. The property is not unique and is currently buildable is a waterfront lot. The request is for a use variance and is not related to the unique lot conditions, but rather a use that is not permitted. In November of 2016 a demolition permit was issued to demolish the single-family home and fencing that previously existed on the property. A fence and landscaping is allowed on a lot with a principal structure. However, installation of a fence, landscaping, lighting, outdoor furniture, and hardscape is the property owner's choice. In this regard, the problem is self-created. Issues related to trespassing, littering, and other complaints identified by the applicant are not self-created.

e. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

Somewhat meets the standard. A use variance permits a use of land that is otherwise not allowed in that district either as a permitted use or as a special land use. A use variance should only be granted in the event that the applicant is able to demonstrate that an unnecessary hardship exists. Some justice could be done by allowing the variance or a lesser variance, but it is important to consider the long-term implications of the use variance in relation to the City's Master Plan and adopted Ordinances. That said, the City's Master Plan has designated this property for Neighborhood Residential and Waterfront

Residential uses. The proposal is inconsistent with the Master Plan. Additionally, spirit of the ordinance can be met by developing the site in accordance with the existing Zoning Ordinance and the principal uses permitted identified in Section 4.01 of the Keego Harbor Ordinance.

2. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required

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findings. Administrative officials and other persons may, but shall not be required to, provide information, testimony and/or evidence on a variance request.

3. The following are specified as appropriate considerations by the ZBA in hearings and deciding variance requests, provided, this list shall in no respect constitute a limitation upon the considerations which may be made by the ZBA:

- a. Other lands, structures, buildings, lots and uses in the same district and in the general vicinity of the property in question.
- b. Whether granting the variance will confer special privileges on the applicant that have been denied by the Ordinance and/or ZBA in other cases.
- c. Whether the requested variance is the minimum necessary to authorize reasonable use of the property in relation to the surrounding area.
- d. Reasonable and available alternatives, which, although not requested by the applicant, would minimize or eliminate the need for variance relief.
- e. The provisions of this Ordinance from which a variance is requested, including the purpose and intent of such provisions within the context of the Ordinance as a whole.
- f. The imposition of appropriate and authorized conditions.
- g. The existence of nonconforming structures, uses of land, or the combination of structures and uses, shall not be used as a singular basis or rationale for granting a variance.

ANALYSIS AND RECOMMENDATION:

The applicant is seeking a use variance for a privately-owned park/recreational use within the Neighborhood Residential (NR) District which includes a fence, landscaping, lighting (on a timer), pathway (hard surface), and outdoor furniture. Although the application package does not expressly state that the applicant is requesting a park use, the Planning Department is interpreting this use to be as such. That said, a privately-owned park within the NR district is not a principal permitted use. Additionally, installation of a fence on a vacant residential lot is not permitted. A principal building or house is required in order to install a fence on the subject property and the property is buildable. The applicant has presented some hardship related to some trespassing issues at the vacant lot. The intent of the zoning ordinance is to prevent non-permitted uses in designated zoning districts. Related to fencing, the applicant has presented a somewhat unique irony. The zoning ordinance regulations specifically prohibit the applicant from installing accessory use fence sections on her vacant lot. However, since both adjacent and abutting property owners have residential homes on their lots, either or both property owners could legally install a fence section at or

RECOMMENDATION:

To consider denial of the request for a Use Variance for ZBA-18-001, 1730 Cass Lake Front, Lots 13 and 14, Cass Lake Camp Grounds; Neighborhood Residential District, Section 4.01 to allow a privately-owned park/recreational use within the Neighborhood Residential (NR) District which will include fencing on a lot without a principal building, landscaping, hardscape/walkways, and lighting; Section 15.13(h) Accessory Buildings, Principal Building as required; to install new fencing on a lot without a principal building (house), as the request does not meet the specific standards for unnecessary hardship from Section 17.03(c) of the Zoning Ordinance

Commissioners Asked Questions Planner Smith:

How has other private parks been approved in the City? Planner Smith explained these Parks were approved 40-50 years ago. The ZBA needs to focus on the current ordinance. If this was a public use would this be allowed?

Why isn't (d) Authorization, a self-created issued when the applicant took the fence down.

Is there any other way to secure this property without a variance? Planner Smith explained a house could be built. ZBA is to review the request in front of you, not to figure out another use that the property could be used for.

Legal counsel for Applicant Richard Linnell 2804 Orchard Lake Ste 203; This is not a very evasive request. This property used to have a home and a fence on it. The applicant demoed the house, removed the fence down due to the condition. The property being on the sandbar is why this property is unique. This is why my client should be able to put up a fence, and make this a green space. This would cut down on the trespassing issues to the lake; enhance the astatic that were there. This is an asset to the neighbors and the community. If my neighbor wanted to have a green space next to my home, I would feel this is a positive change. This is an asset to the neighborhood and the community.

Commissioner Lampl indicated; On Page 3 of application, you want to maintain the water view. Would this property be used for any type of functions? Richard Linnell stated the residence of Magnolia would use it for viewing, there would be not boat traffic. This property would not be opened to any type of foot traffic.

Vice Chair Bernstein; Clarify that no foot traffic would be allowed in the park. Richard Linnell stated this property is not intended to be opened to residences of Magnolia, it is just for view. The gate would be locked at all time.

Vice Chair Bernstein asked; Would this property be able to be accessed by emergency responders? Richard Linnell stated, No it would not be accessible for emergency responders the fencing is not designed for that type of access.

Commissioner Balutowicz asked; If the walkway is hardscaped is this allowed, if this was a public park? Planner Smith indicated: a walkway no matter what the material is still a walkway. With the plans that have been submitted it is a park, if opened to public it's a public park. If it is intended only for private use it is a private park.

Commissioner Lampl; questioned if this was approved could the property be used for whatever they want? Planner Smith explained that ZBA can put conditions on the approval.

Dr. Farideh R. Bagne property owner indicated: this property has no entrances on the lake side for Magnolia residences; it is for them to have lake view only.

Open the Meeting to the floor:

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John Newberry, 1723 Beechcroft Keego Harbor: Asked for clarification from Dr. Bagne, on having a boat and or dock on this property. In the past it was mentioned that you would take seniors for a sunset boat ride. Dr. Bagne explained the boat ride would be on Sylvan Lake from the public access, not from the Cass Lake property.

Jeff Jonna represented the adjacent property north of 1730 Cass Lake: stated that he was taken to court by Dr. Bagne, her son was her legal council representative in this court case. During the court case it was stated the seniors would not be able to utilize vacant property due to the deep ruts in the grass. Mr. Yono 1720 Cass Lake Front; Property is zoned neighborhood residential he would never of purchased his property that he is currently building a home on, if he would on known a park was going to be built next to his property. Parking would be a major concern, seniors from Magnolia has extended family members come into town and wanted to have a birthday party in the park. Where would the family member park their vehicles?

Planner Smith; the zoning district NR would stay the same, the use is what would change. This is private property is not attached to Magnolia property. If approved it would be stipulated Private Park. If the property is sold the condition would stay with the property, if this variance is approved.

Jeff Jonna commented; you stated the gate would have a key lock. A resident could leave the gate open and you would have people using the park and parking on the street. This would be a huge impact on the neighborhood. The City already has a couple public parks on Cass Lk. that can be utilized.

Patti Kallen, Property manager at Sylvan Lake Condo's and a property owner of multiple units: I agree with Mr. Jonna's statements. Hopefully the City has thought about the impact on the property values surrounding the park if the Zoning was changed.

Suzie Becker owner of 1754, 1746, 1763, 1751 Cass Lk Front: I have had several issues with Dr. Bagne while constructing Magnolia coming onto our property, abuse our property, and break water mains. Suzie Becker questioned Dr. Bagne about adequate parking. It was explained the question must be directed to the ZBA Vice Chair. Is Dr. Bagne following state laws?

Immad Daboul 1738 Cass Lk front: I have lived at this property for 5 years, I did not invest into the property I own to have a park next to my home. I tried to purchase the lot, it was sold out from under me. The summer time this is a party lake, this past summer this lot had people trespassing. If this property is not going to be a park for Magnolia residents then what do you need a park for? The house that was demolished was in good condition. Applicant chose to tear down an existing home in the NR district and build a park. Dr. Bagne should have known the zoning of the property and what could be built, before she purchased the property. David should be requisied for voting, he is 100% with Dr. Bagne while she was building Magnolia. I want to live where I can set on my dock and have privacy. We will not have privacy if this park is allowed. Mr.

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Daboul reiterated that David Emerling should re-qualify himself from the vote, because his vote is 20%.

Commissioner Emerling rebutted Mr. Daboul's comment; I have no ties to Magnolia what so ever.

Vice Chair Bernstein stated if you have some reason and need to disclose something or re-qualify yourself please do so. If not we will move on.

Commissioner Emerling; I am an engineer by degree and an engineer by trade. I did watch the Magnolia project being built; I was intrigued by modular design. I am not on their payroll, nor their attorney. This is all hearsay

Vice Chair Bernstein asked Commissioner Emerling if he could judge this matter fairly? Commissioner Emerling state absolutely. We will move forward.

Troy Elder representing 1738 Cass Lk front: I feel that Commissioner Emerling would be bias to this property in his vote. This is the reason why the City has a master plan to follow. Once a fence is up would it be locked? Knowing the issues in this area of the Lake, people will just jump the fence. This park would be an access for anyone to access the water, it would be a nightmare. Maybe a viewing deck from the 3rd floor of Magnolia property would be a better alternative than a park. To change the Zoning for this applicant would set a bad precedence for the City. Does the ordinance have any requirement if a property is demolished? Planner Smith explained the property owner does not have to be re-build.

Vice Chair Bernstein; address the matter re-qualify according to Roberts Rules of Order; If Commissioner Emerling does not re-qualify himself, any Commissioner could make the motion to re-qualify Commissioner Emerling it would pass if the motion carried.

Jennifer Newberry 1723 Beechmont; questioned if this is going to be a park, what is the purpose of this park if the people at Magnolia are not going to use it? Dr. Bagne has stated that the residents are in wheel chairs and using walkers, are the residences going just go and look at the lake through the gate? The answer to the question is the residences can view the lake from the inside of the building.

Larry Becker 1751 Cass Lk Front; questioned if the plans has a fence that runs all the way to the lake? The fence runs east west, the deed restriction for Cass Lake Camp ground, no fence in the front of the house. I am sure the residences on the lake front pay high taxes. The issues with the 2,000-3,000 people that hang out on the sand bar each weekend is already a huge issue. The police deal with intoxicated people trespassing weekend. Hopefully you will deny the request for these reasons.

Mrs. Daboul 1738 Cass Lake Front; the home that was demoed was a beautiful home. The reason she purchased this property is to make a park. The residences from Magnolia did come to this property last year and go to the water with their walkers. Vice Chair Bernstein stated that conditions can be required.

Mr. Lindell indicated; my client Dr. Bagne is the property owner she has two choices. Either makes the improvements as proposed or the property will sit as is. People can trespass every single day, it has happened with the construction works on the adjacent property whether by intent or not. Neighbors are concerned about trespassing a fence would be a deterrent for this issue. With all the concern about trespassing issues on the lake in this area, a fence would be the logical answer. We ask that you respectfully consider the variance, and grant the variance.

Dr. Bagne the property owner, the comments that have been made here tonight were from neighbors of this property; one neighbor wanted to purchase this property. I just want to make sure that you know this property is not going to be sold or built on. I did grade this property and planted grass seed, it was very nice. Because I cannot put a fence on the property, I have had nothing but issues with trespassers. My neighbors using it as a parking lot, construction crew driving on it and ruining my nice grass. I want to be a good neighbor and have a beautiful quiet park with a fence to stop trespassers. Let's be good neighbors and work together, this is my property not Magnolia's. I have no plans of allowing Magnolia residences because of liability issues. The fence would keep kids off the property from getting to the water being hurt.

Letter was received from Nancy & Ron Sekulich 1730 Cass Lk Front and read; not in favor of the Zoning request change, leave it as a single family residential lot.

Commissioner Emerling asked; With the conversation here tonight trespassing is an issue with this property. What opportunities do we have? Planner Smith there are three options; screening, fencing, signage. Option 1) Fencing; is not allowed on a vacant lot 2) Screening; landscaping to show boundary lines 3) Signage; which the applicant has done.

Vice Chair Bernstein asked Sylvan Lk Condo Manager Patti Kallen if they have some type of security for the property. Patti Kallen stated yes they have security, people still trespass. We have found planting a couple rows of mature evergreens works well and it makes a nice green belt.

Commissioner Fletcher indicated; I have to disagree with Planner Smith, (d) Authorization. The Applicant took the house and the fence down. If the house would have not been taken down we would not be here tonight. No way does this meet any hardship criteria.

Dr. Bagne stated this house was not livable, the sink and bath tubs were removed. The house was filled with asbestos. The county had lowered the tax base to the price of the land.

Motion by Commissioner Fletcher to deny the request for a Use Variance for ZBA-18-001, 1730 Cass Lake Front, Lots 13 and 14, Cass Lake Camp Grounds; Neighborhood Residential District, Section 4.01 to allow a privately-owned park/recreational use within the Neighborhood Residential (NR) District which will include fencing on a lot without a principal

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building, landscaping, hardscape/walkways, and lighting; Section 15.13(h) Accessory Buildings, Principal Building as required; to install new fencing on a lot without a principal building (house), as the request does not meet the specific standards for unnecessary hardship from Section 17.03(c) of the Zoning Ordinance Support by Commissioner Lampl.

Roll call vote to deny this request;

Commissioners Emerling yes, Balutowicz yes, Fletcher yes, Lampl yes, and Vice Chair Bernstein yes. Application is denied.

5 Ayes

Motion Carried

APPROVAL OF MEETING MINUTES

Motion by Emerling to table January 24, 2018 Meeting Minutes, support by Balutowicz.

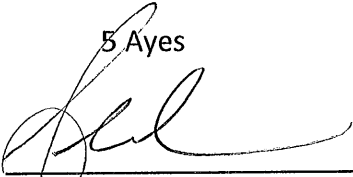
5 Ayes

Motion Carried

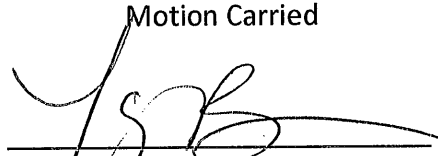
Planner Smith; Reminder at the next ZBA meeting we will hope election of officers.

ADJOURNMENT

Being no further business motion by Fletcher to adjourned the Zoning Board Meeting at 8:51 P.M, support by Balutowicz.

5 Ayes


STEVEN BERNSTEIN
ZBA CHAIR

Motion Carried


TAMMY BLEASHKA
ADMINISTRATIVE CLERK