

**MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
FARMINGTON HILLS CITY HALL  
31555 W. ELEVEN MILE ROAD  
FARMINGTON HILLS, MI  
MAY 14, 2024 – 7:30 PM**

**1. CALL MEETING TO ORDER**

Chair O’Connell called the meeting to order at 7:32pm and made standard introductory remarks explaining the role of the ZBA and the formal procedures of the meeting.

Board Members scheduled a site visit on May 12, 2024, and may also have visited the site independently. No action was taken at the site visit.

**2. ROLL CALL**

Members Present: Irvin, Jamil, Khan, Lindquist, O’Connell, Rich, Vergun

Members Absent: None

Others Present: Zoning Supervisor Randt, City Attorney Morita, Recording Secretary McGuire

**3. APPROVAL OF AGENDA**

**MOTION by Rich, support by Irvin, to approve the agenda as submitted.**

**Motion carried unanimously by voice vote, 7-0.**

**4. NEW BUSINESS:**

**A. ZBA CASE: 5-24-5735**  
LOCATION: 32534 Sanctuary Court  
PARCEL I.D.: 22-23-126-078  
REQUEST: In order to construct a new home in a RA-1 Zoning District, the following variance is requested. 1. A 6.26 variance to the required 40-foot exterior side yard setback to allow for a 33.74-foot exterior side yard setback.  
CODE SECTION: 34-3.1.4  
APPLICANT: Alan Sawalha  
OWNER: Mohammad Sarwar

Zoning Supervisor Randt described the facts of the case. The vacant property is located south of Eleven Mile Road between Orchard Lake Road and Farmington Road; a survey, site plan and background documentation were in the packets.

Alan Sawalha, Landwise, Inc., was present on behalf of this request for a variance to the required 40-foot exterior side yard setback, to allow for a 33.74-foot exterior side yard setback. Owner Mohammad Sarwar was also present.

Mr. Sawalha made the following points:

- There was a mistake on the original survey, resulting in the property lines being misidentified on the original plans. The plan was approved and construction was started based on the misidentified property lines. The mistake was discovered after the basement was poured.
- The applicant was requesting a variance so that the construction can continue.
- The overall total setback left and right of the house would remain the same. The property lines are now shown in the correct location, with the right-hand side setback (east) being decreased and the left-hand side setback (west) being increased. The size and footprint of the house will be unchanged.
- There are no other houses in line with this house on that short segment of road; this is the only house on that piece of road facing east. The variance would not affect the overall setback of any other house on the street.

In response to a question, Mr. Sawalha said that he had nothing to add relative to the criteria for granting a variance.

#### Public Comment

Kaitlyn Elias; Dickinson Wright, Troy MI; spoke on behalf of Mr. Le, the owner of the neighboring property at 32548 Sanctuary Court. Ms. Elias requested the variance be denied because the notice that was issued was misleading as to the required setback and the variance requested, and because the application failed to meet the standards for variance approval required under Section 34-7.14.6 of the zoning ordinance.

Ms. Elias reviewed a written statement submitted earlier today.

- The requested variance was inconsistent with side yard setback requirements.
- The notice was unclear whether the variance was for a side yard or a front yard setback.
- The applicant did not submit materials to support exceptional or extraordinary circumstances for the variance.
- City tax records established the property as a 0.6 acre lot. The applicant constructed a structure in the setback in violation of Section 34-d.1.4 of the zoning ordinance.
- The proponent did not demonstrate that the variance was based on the preservation and enjoyment of a substantial property right.
- Properties in the district were generally compliant with ordinance setback requirements.
- Granting the variance would be materially detrimental and injurious to Ms. Elias' client, would encroach upon her client's privacy and enjoyment of his property, and would injure her client's property value.
- Granting the variance would affect the purposes and objectives of the future land use plan by rendering the setback requirements for the residential zoning district essentially meaningless. Where the need for a variance is avoidable with minimal planning prior to construction, the variance is entirely self-created by the applicant's failure to review the setback requirements of the ordinance prior to construction, The variance must be denied to ensure that the requirements of the RA-1 Zoning District remain enforceable against future development.

In response to questions, Ms. Elias made the following points:

- The setback between the proponent's property and her client's property would be narrowed, encroaching on her client's right to space.
- Ms. Elias was not aware of whether her client complained when the first building permit was issued.

Member Vergun pointed out that the setback between the applicant's house and Mr. Le's property was significantly greater than the minimum, and that the corrected property lines actually showed a greater setback between Mr. Le's house and the property line than what was previously shown.

Chair O'Connell noted that in her comments Ms. Elias had referenced a conversation with Supervisor Randt regarding the total amount of setback on both sides of the subject property. Would Supervisor Randt address this issue?

Zoning Supervisor Randt explained that the only deficiency on the site was in the front yard setback; otherwise all criteria were met. Per the Planning Division, all setbacks were met except for the question before the Board right now.

Member Rich noted that the zoning ordinance treated an exterior side yard as a front yard for determining the setback. Further, the requested variance was not for the dividing line between the properties, and the neighbor had not identified an injury that would be caused by granting the variance.

Member Lindquist agreed that the neighbor had not identified any injury, and that the updated survey moved the building farther away from the west property line. If the property lines had been correctly identified, the new house would have been closer to Mr. Le's house.

Ms. Elias said that the burden was on the proponent to show that the variance was not injurious. Also, whether through a mistake or not, when someone starts construction and then later comes to the ZBA for a variance is not following appropriate process.

Chair O'Connell said that the ZBA had approved variances on projects that have been constructed or partially constructed. The timing was not at issue this evening. Was there an underlying reason why the neighbor opposed this variance?

Ms. Elias said she was here to protect Mr. Le's rights under the ordinance and his property rights under Michigan law to make sure that his voice is heard, and that his property rights as to his specific property, including any setback requirements, are maintained and enforced on his behalf. Mr. Le has not expressed any other reasoning to oppose this construction, except that he doesn't believe that the notice and the application is satisfactory under the ordinance.

Addressing the question as to whether this request was properly noticed, Member Rich explained that an exterior side yard is in fact treated as a front yard for purposes of determining the setback. That being the case, would the applicant remove the objection with respect to the notice of the hearing?

Ms. Elias said she would have to review the ordinance before responding.

Member Rich further explained that the only variance being requested was for an exterior side yard, for the side abutting a street. The property line between the Mr. Le's home and this property was not the subject of the variance, and was not being impacted.

Member Rich said that the ordinance talks about variances being necessary for preservation and enjoyment of a substantial property right and granting of such variance will not be materially

detrimental to public welfare or be materially injurious to the property or improvements in such a zone or district in which the property is located. In this case, Mr. Le is objecting to granting the variance without showing how he is being injured by the request. The Board was not hearing the rationale for denying the request.

Ms. Elias said the applicant had the burden of proof to show the neighbor was not being injured.

Member Lindquist said the applicant must show that the variance won't injure other property owners in the district. Ms. Elias is alleging that her client is injured, but the injury is not identified. In fact, correcting the property lines shows that the proposed home is further from the west line than previously identified. Again, had the property lines been correct from the beginning, the new home would have been closer to Mr. Le's home. It was difficult to see a demonstrable harm to the neighbor in this case.

Ms. Elias said that on behalf of her client, the new property lines should be verified before construction goes forward. In response to a question from the Chair, Ms. Elias said she was not disputing the new survey, but did need to better understand what had happened in this case.

Chair O'Connell opened the meeting to public comment.

John Davies, 32533 Sanctuary Court, directly south and across the street of the proponent's lot, supported the variance request. Given the space with the easement and the setback, there would be plenty of room to make the property attractive and presentable to the community and the Homeowners' Association. He wondered why this matter had come up when the house had been under construction for some time.

Yaman Al-Hadidi, 32485 Sanctuary Court (across the street to the east of the subject site), said that she was the HOA secretary. Approvals were needed before plans proceeded, completion was required within a year, and penalties could be implemented. She asked for clarification regarding the setback issue.

Member Rich noted that the Board had no authority to enforce association bylaws.

Member Lindquist explained that the variance would not affect property lines other than to correctly show where they are located, nor would the variance impact the view from Ms. Al-Hadidi's house. The variance would allow the house to be 6.26' closer to the road than normally allowed. The house is not shifting, but will remain in the same location where the foundation is currently poured. If the variance is granted, the house will be built according to the submitted plans.

In response to public comment, Mr. Sawalha made the following points:

- The variance was being requested at this stage of construction because the misidentified survey lines were discovered after construction had started.
- If the mistake was discovered prior to construction, the building would have been six feet closer to the objecting neighbor at 32548 Sanctuary Court

Member Vergun noted that the public easement was usually a uniform distance along a street, and that the distance between the proponent's house and the street compared to other properties on the

street was a sign that the survey lines were incorrect, indicating that the problem could be defined as self-created.

In response to questions Mr. Sawalha made the following points:

- The misidentified survey lines were caught by a third-party surveyor hired by a financing bank.
- A consistent curb or pavement line was not necessarily an indication of property lines, and curbing and pavement were not used as property line markers.
- The original survey, completed by Mr. Sawalha, had inaccurately identified corners.

Owner Mohammad Sarwar made the following points:

- The incorrect foundation location benefited the property at 32548 Sanctuary Court, placing the new home further from the neighboring property.
- If the variance was not granted, the construction time would be significantly extended, which would not be good for the neighborhood. Granting the variance would not be harmful, but not granting the variance would create substantial harm.
- If the Board did not grant the variance, Mr. Sarwar would dig up the new foundation and continue building the house. The builder's insurance company would provide compensation.

Secretary Vergun reported that there was an affidavit of mailing, with five undeliverable returns.

#### Board discussion and/or motion

City Attorney Morita disputed the allegation that the notice for this request was insufficient. The notice language said that a variance was requested and gave the amount of the variance from the requirement. The notes to the zoning ordinance starting at Section 3.5.2.E clearly describe the setback requirements when a side yard abuts a street, and a diagram was also provided to show the setback requirements. The Board should not consider this as an issue during their deliberations.

After discussion and amendment, the following motion was offered:

**MOTION by Khan, support by Jamil, in the matter of ZBA Case 5-24-5735, 32534 Sanctuary Court, Parcel I.D. 22-23-126-078, that the petitioner's request for a 6.26-foot variance to the required 40-foot exterior side yard setback to allow for a 33.74 foot exterior side yard setback be granted, because the petitioner did demonstrate practical difficulties exist in this case in that he set forth facts which show that:**

- 1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome. Compliance with the ordinance would require the existing foundation to be torn out and completely redone.**
- 2. That granting the variance as requested would do substantial justice to the petitioner as well as to the neighbors in the district, or that a lesser relaxation than that relief applied would give substantial relief to the owner of the property since the basement has already been poured. Compliance with the ordinance would affect substantial justice to other property owners in the district. The Board has heard from two neighbors who are concerned with the duration of construction, and who would prefer for construction to**

- be completed rather than extended. Granting the variance is consistent with the requirement for substantial justice to the petitioner as well as the other property owners in the district. There are no reasonable alternatives.**
- 3. That the petitioner’s plight is due to the unique circumstances of the property, in that this is a three-sided wide lot facing a street with no adjacent neighbors creates an unusual side yard situation.**
  - 4. That the problem is not self-created, in that the property owner did not create this situation. The property owner is a taxpayer in Farmington Hills who should not necessarily be held to the mistakes of a company and/or surveyor.**

**With the following conditions:**

- There will be no other setback encroachments on the property**
- The construction will proceed in accordance with the plans that are on file with the City.**
- No other variances will be requested.**

Member Vergun acknowledged that there were feelings on both sides of the case, but said he did not think the case met all of the standards for approval.

**Roll call vote:**

**Ayes – Irvin, Jamil, Khan, Lindquist, O’Connell.**

**Nays – Rich, Vergun**

**Motion passed 5-2.**

- B. ZBA CASE: 5-24-5736**
- LOCATION:** 27132 Winchester Ct.
- PARCEL I.D.:** 22-23-16-151-076
- REQUEST:** (Revised architectural plans) In order to build a 223 square foot addition (sunroom) in an RA-1 District located twenty-nine (29) ft. from the rear property line, the following variance is requested: A six (6) ft. variance from the required thirty-five (35) ft. rear yard setback requirement.
- CODE SECTION:** 34-3.1.4.E
- APPLICANT:** Steven Zukkoor c/of SJZ Homes
- OWNER:** Salim and Farida Bhinderwala.

Zoning Supervisor Randt described the facts of the case. The property is located between Grand River and Halsted Road, and south of 696; a site plan and background documentation were in the packets.

City Attorney Morita explained that the Board had seen this case in October 2023, when approval was conditioned on strict conformance to the plans. The proponent’s plans had since changed, and this was essentially a new variance request.

Steven Zukkoor; SJZ Homes, Bloomfield Hills; was present on behalf of this request for a six-foot variance from the required 35-foot rear yard setback in order to build a 223 square foot addition.

Mr. Zukkoor made the following points:

- The proponent was approved for a 6' variance to build the 16.5' x 13' addition in October 2023.
- The existing deck was demolished in January 2024, at which time the owner and builder explored the possibility of a second-floor walkout above the addition. This would not change the footprint, but would require changing the hip style roof to a flat roof, and add railings.
- Updated plans were submitted in February. The Building Department requested some added details, and a revision was submitted on April 1, 2024. Mr. Zukkoor received an email indicating that the revision was approved, and that a new permit was issued on April 11, 2024.
- Based on the email, Mr. Zukkoor started scheduling the work, ordering windows and lumber, and scheduling the foundation.
- On April 19, Mr. Zukkoor was informed that there was an error, and that the permit was not approved.
  - Mr. Zukkoor was told that he needed ZBA approval.
  - Mr. Zukkoor had requested starting the foundation because it was unchanged from the original approval. The request was denied.
  - Mr. Zukkoor asked for approval of the new elevation.

Zoning Supervisor Randt clarified that the change was a major revision to the previous approval, which had the following condition:

“The size, shape, materials and colors of the addition be exactly as submitted to this Board and as communicated relative to matching the color of the existing brick and shingles, and that the construction of the addition be consistent with the elevations provided.”

Farida Bhinderwala, 27132 Winchester Court, explained that the proposed change would provide their special needs daughter with extra enhancement of nature, but they would proceed with the original plan if the request was denied. Ms. Bhinderwala distributed pictures of views from the upstairs bedroom.

City Attorney Morita explained that the original variance would still be valid if tonight's request was denied, as long as permits were pulled and construction was started within one year of the original approval.

In response to questions, Mrs. Bhinderwala said that the addition would not be visible from the property to the south, and the neighbor to the north had written a letter of support for the original plan and had also indicated support for the revised plan.

Member Rich noted that the addition should be consistent with other building materials. Who would make this determination?

City Attorney Morita explained that the property owner should ensure consistency with other building materials, and that the building inspector would not issue a final certificate of occupancy until the materials were deemed to be appropriate and consistent with the rest of the building.

Mr. Zukkoor said that the elevation would have consistent building materials with the exact same railing on both levels.

Secretary Vergun reported that there was an affidavit of mailing, with no returns.

Board discussion and/or motion

**MOTION by Lindquist, support by Irvin, in the matter of ZBA Case 4-24-5736, 27132 Winchester Court, Parcel I.D. 23-16-151-076, that the petitioner's request for a six (6) foot variance from the required thirty-five (35) foot rear yard setback be granted because the petitioner did demonstrate practical difficulties exist in this case, in that she set forth facts which show that:**

- 1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose and would render conformity with the ordinance unnecessarily burdensome, given that a similar variance has already been granted on this property.**
- 2. That granting the variance as requested would do substantial justice to the petitioner as well as to other property owners in the district, and would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**
- 3. That the petitioner's plight is due to the unique circumstances of the property abutting an open space and undevelopable area behind.**
- 4. That the problem is not self-created, but is related to the fact that the land that is behind the proponent's home is all that would be affected, and that land is all open space.**

**With the following conditions:**

- Construction of the sunroom and upper deck will be consistent with the plans, preferably with an enlarged version of the plans, so that the Zoning Department can reasonably check conformance with zoning requirements.**
- Construction materials will be consistent with materials used in the rest of the home and with the design as provided to the Board.**
- The variance will be acted on within 1 year, and there will not be additional changes to the plans.**

**Motion passed unanimously by voice vote, 7-0.**

**5. PUBLIC QUESTIONS AND COMMENTS**

None.

**6. APPROVAL OF MINUTES January 9, 2024**

**MOTION by Vergun, support by Lindquist, to approve the January 9, 2024 meeting minutes as submitted.**

**Motion passed unanimously by voice vote 7-0 .**

**7. ELECTION OF OFFICERS**

**MOTION by Rich, support by Khan, to re-elect the current officers:**

**Michael O’Connell, Chair**

**Dan Irvin, Vice-Chair**

**Daniel Vergun, Secretary**

**Motion passed unanimously by voice vote.**

**8. ADJOURNMENT**

**MOTION by Khan, support by Vergun, to adjourn the meeting.**

**Motion approved unanimously.**

The meeting adjourned at 9:07pm.

Respectfully submitted,  
Daniel Vergun, Secretary

/cem