

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
JULY 10, 2018**

CALL MEETING TO ORDER

Chair Seelye called the meeting to order at 7:30p.m. and made standard introductory remarks explaining the formal procedure, courtesies and right of appeal.

ROLL CALL

The Recording Secretary called the roll.

Members Present: Barnette, King, Lindquist, Masood, O’Connell, Rich, Seelye and Vergun

Members Absent: Irvin

Others Present: Attorney Morita and Zoning Division Representative Grenanco

SITE VISIT JULY 8, 2018

Chair Seelye noted when the Zoning Board of Appeals members visited the site.

The Sunday site visit begins at 9:00a.m. at City Hall. It is an advertised open, public meeting under the Open Meetings Act, is only for informational purposes; the Board members abstain from any action, hearing testimony, or any deliberations.

APPROVAL OF AGENDA

Zoning Division Representative Grenanco noted that Case C and D had requested to be withdrawn from the agenda.

MOTION by Rich, support by Barnette, to approve the agenda as amended.

MOTION CARRIED 7-0.

OLD BUSINESS

- A. ZBA CASE: 2-07-5235
- LOCATION: 28901 Bartlett
- PARCEL I.D.: 23-11-102-026
- REQUEST: In a RA-2B Zoning District, renewal of home occupation (lawn care business) for a period of three years.
- CODE SECTON: 34-4.15
- APPLICANT: Daniel and Cindy Mackler
- OWNER: Daniel Mackler

Utilizing overhead slides, Zoning Division Representative Grenanco presented an aerial view and photos of the property, noting that the property was 3 parcels with one main lot where everything is taking place. She explained that the matter has been brought before the Board multiple times since 1982 as a home occupation and the ordinance stipulates no employees other than residents of the dwelling shall be employed at or otherwise located on the premises and no vehicles owned or operated by the employees other than residents shall be parked on or near the premises. She stated that the ordinance for home

occupation also prohibits commercial vehicles from being stored on the premises and that is why the applicant is here today requesting a temporary permission. She noted that the determination should be based on whether or not the Board feels that this is in conflict with the overall residential character of the area.

Chair Seelye asked if there have been any complaints over the years. Zoning Division Representative Grenanco responded that since the last permission there has not been.

Dan Mackler, 28901 Bartlett, applicant, explained that they have lived at the property for 41 years and started the small lawn care family business 36 years ago and there have never been any complaints. He stated that they have been before the Board 9 times for permission and he has appreciated the Board's approval. He noted that over the last 2 years the business has got smaller and they are down to a 4 day week. The employees include himself, his wife, his son who lives at the house, and 2 part-time employees who have their vehicles on the property; but there has never been an issue. He added that the commercial vehicles on the property are kept in a way they cannot be seen from the street.

Chair Seelye asked if anything has changed since the last time they were before the Board. Mr. Mackler responded that they are no longer doing fertilization, only cutting grass, trimming shrubs, and spring and fall cleanups.

Member King questioned where the 3 year term comes from. Zoning Division Representative Grenanco responded that it is what was requested as this is a temporary permission.

Member King commented that the last time the temporary approval was granted was in 2013 for a 3 year period which means for the last 2 years the applicant has been operating without an approval and asked the applicant if this was correct. Mr. Mackler responded yes and he thought that as long as there were no complaints everything was good.

Member King stated that having received the temporary approval 9 times it seems like something that would be important for the applicant to remember.

Member Rich noted that there was a large trailer outside of the fence and asked if that stayed there at all times or does it get moved back in periodically. Mr. Mackler responded that it does get moved in periodically and it is used for general use, transporting snowmobiles and such, and they keep it so it cannot be seen from the street.

Member Lindquist asked if the applicant still owns the parcel to the south. Mr. Mackler responded yes and noted that they do not park on that parcel.

Member Masood questioned if the Board were inclined to grant the renewal, would it be effective from the last renewal expiration or from today's date. Attorney Morita responded that it would be from today's date for an extension of 3 years.

Chair Seelye opened the public portion of the meeting.

Richard Kerr, 28851 Greening, explained that he has lived there for 18 years and has seen their operation go by many times a week and they go slow, stop at the stop signs and are never in any rush. He stated that their property is very nice and they keep everything in accordance with the rules. He noted that if this did not pass it would upset their whole operation and family. He stated that he supports the renewal.

Joe Wyderko, 29117 Bartlett, explained that he moved here in October and the previous owners had told him that the neighbors had a landscape business and it was several months before he knew they operated out of the house. He stated he drives by every day and nothing is visible from the street or his property, therefore, he has no objection to the renewal.

There being no further public comments, Chair Seelye closed the public portion of the meeting.

Member Lindquist confirmed there was an affidavit of mailing on file with 0 returned mailers.

Member Masood noted that the Board received 5 letters in support of the renewal.

MOTION by Masood, support by Lindquist, in the matter of ZBA Case 2-07-5235, to **GRANT** the petitioner's request for a renewal of home occupation (lawn care business) for a period of three years, through June 2021.

SUBJECT to the following conditions:

- The petitioner shall maintain the current foliage as represented during the site visit.
- The Zoning Division shall continue to monitor the site and in the event there are any complaints the Zoning Board of Appeals would be notified and the applicant would come back before the Board and the Board would deliberate and react appropriately as to whether or not the permission would continue.
- There shall be no more than three parked non-resident employee vehicles in the neighborhood.

Member Vergun stated he was glad it was brought up that there had been a 2 year lapse in the permission and if the proponent could make sure to return on time in 3 years it would be greatly appreciated.

Member Rich commented that the conditions set forth in ordinance 34-4.14.2 have been met such that the Board finds that the petitioners operating the home occupation are not in conflict with the overall residential character of the area and will be subject to the conditions that have been set forth.

MOTION CARRIED 7-0.

NEW BUSINESS

B. ZBA CASE: 7-18-5641
LOCATION: 38000 Hills Tech Drive
PARCEL I.D.: 23-18-100-021
REQUEST: In an IRO/FRW-3 Zoning District, a variance from the requirement that fences shall not contain barbed wire.
CODE SECTON: 34-5.12. 2. C.
APPLICANT: DTE/Robert Bosch, L.L.C.
OWNER: Robert Bosch, L.L.C.

Utilizing overhead slides, Zoning Division Representative Grenanco presented an aerial view of the property and photos of the property. She explained that it was a very large parcel with 3 separate driveways and the area where the DTE substation will be located will be all the way to the far west driveway which is currently a wooded lot. She noted that the City ordinance does not allow barbed wire.

Jeff Smigielski-McHenry, 38000 Hills Tech Drive, applicant, explained that they need the variance as they have been required by DTE to install a substation due to an increase in their electrical utility needs

and per DTE they need a fence around it with one foot barbed wire for safety and security reasons. He noted that the substation will be located at the far west drive all the way in the back of the property.

Jerry Philo, 26913 Northwestern Highway, Harley Ellis Deveraux, Project Manager, explained that zoning approval is needed for the 1 foot of barbed wire on a 6 foot chain-link fence as DTE is adamant about having barbed wire to provide added security of the extreme high voltage within the substation yard. He stated that the substation will connect to the overhead high distribution system that runs on the property between Bosch and north to Nissan and it will look like any other utility substation yards seen throughout Metro Detroit. He submitted photos to the Board of DTE substation yards with barbed wire within the Farmington Hills area.

Chair Seelye questioned the height of fences being limited to 6 feet. Zoning Division Representative Grenanco responded stating that fences are limited to 6 feet in residential areas and in other districts they can go up to 8 feet.

Member King stated that he is recusing himself as he has a business relationship with Mr. Philo.

Chair Seelye called Member O'Connell to sit in on the case.

Chair Seelye questioned the DTE sign on the northeast corner of the property. Mr. Philo responded that he is not aware of a substation in that location.

Mr. Philo explained that the current service to the site is overhead and that will be replaced with the high voltage substation which is more reliable and will meet the needs of Bosch's electrical demands. He added that the reason for the fence is primarily for security and DTE is adamant about the barbed wire fence for the safety of others.

Chair Seelye asked if someone were to get inside the fence is it possible to touch something and be electrocuted. Mr. Philo responded yes, absolutely.

Mr. Philo stated that it is very high voltage wire coming down from the poles and DTE is concerned about safety and security. He added that he has not seen a DTE yard without barbed wire.

Chair Seelye asked if there was other barbed wire on the property without a variance. Mr. Smigielski-McHenry responded that there is a barbed wire fence that runs between Bosch and Nissan and he is unaware on how far back it dates and what site it belongs to.

Mr. Philo commented that the site was developed in 1980 and occupied 1983 so that could be original fence. He noted that he has been with Bosch since 2001 and since that time they have only installed a security fence on the backside of the facility which does not have barbed wire.

Chair Seelye asked if the Board was inclined to grant the barbed wire would it be possible to grant a variance for the existing barbed wire. Attorney Morita responded that she would be hesitant to do so especially if the proponent stated that they do not know if that fence belongs to Bosch. She added that the request is written up just for the fencing around the substation and the Board does not have dimensions or locations on any of the other fences.

Member Masood questioned if the intention was to install a 6 foot fence plus an additional 1 foot barbed wire or a total of 6 feet. Mr. Philo responded it would be 6 foot fabric fence with 1 foot barbed wire on top,

Member Rich asked if fabric would be woven through the fence. Mr. Philo responded that they refer to chain-link fence as fabric and the only time they use woven fabric is in residential areas.

Member Rich commented that they would want to be able to see inside the yard so they would not want actual fabric on the fence.

Mr. Philo noted that Bosch will have security cameras so they can monitor security inside the yard as it will be their life-line service to their facility.

Member Rich commented that in the application it states that the barbed wire provides the code required site security, and questioned what code that is. Mr. Philo responded that he was not sure where that came from, it could be a safety code but he cannot answer that question.

Member O'Connell asked if code allowed for an 8 foot fence why not put up an 8 foot fence without barbed wire. Mr. Philo responded that an 8 foot fence is still easy to scale and this is what DTE has asked for and they have not discussed any alternatives.

Member Barnette mentioned that his background is in electrical and he has worked in making and distributing power. All the substations he has seen usually have a 10 foot high fence with barbed wire. He noted that the National Electrical Code is what DTE was referring to because they are required to have the substation completely locked to keep children from climbing over and getting in-to the equipment.

Chair Seelye opened the public portion of the meeting. There being no public comments, Chair Seelye closed the public portion of the meeting.

Member Lindquist confirmed there was an affidavit of mailing on file with 35 returned mailers.

Member Rich commented that his initial thoughts on this case were focused more on the concern about vandalism because if someone wanted to get in they could wear thick jeans or use wire cutters to gain access and cause damage. He noted that the Board recently had another case involving barbed wire but the issue was not really a safety concern it was more so potential vandalism. He stated that the focus in this case is on safety of potential individuals who would go in not thinking it through, so he is seeing a bit of a difference here as contrasted with a case to protect vehicles or natural gas substations; therefore he is more inclined to grant the variance after hearing the testimony today.

Chair Seelye stated he agreed with Member Rich that this is a different issue than a natural gas substation.

MOTION by Rich, support by Barnette, in the matter of ZBA Case 7-18-5641, to **GRANT** the petitioner's request for a variance from the requirement that fences shall not contain barbed wire; because the petitioner did demonstrate practical difficulties and that he set forth facts that do show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district by keeping unwanted trespassers out.
3. That the petitioner's plight is due to the unique circumstances of the property and specifically the needs of Bosch in having appropriate power generation.

4. That the problem is not self-created because the electricity usage is somewhat inherent in the nature of what Bosch does and the alternative being they are out of business and that is not what is intended for a self-created issue.

SUBJECT to the following conditions:

- The fence shall be 6 foot in height with 1 foot of barbed wire
- The fence shall be consistent in color and materials as presented in photos provided

Member Lindquist stated that he intends to vote against the motion as he finds there is a solution within the code, and finds an 8 foot fence superior to a 6 foot fence with barbed wire, which is prohibited. He noted that there is a solution available to the applicant within the code in which they have chosen not to pursue; therefore he cannot support the motion.

MOTION CARRIED 6-1 (Lindquist opposed).

PUBLIC QUESTIONS AND COMMENTS

Attorney Morita discussed the Open Meetings Act and Freedom of Information Act and how it relates to the Boards correspondence.

ELECTION OF VICE CHAIR

Discussion took place regarding the position of Vice Chair.

MOTION by Rich, support by Masood, to nominate Member Vergun as Vice Chair.

MOTION CARRIED 7-0.

Member Vergun accepted the nomination.

APPROVAL OF MAY 8, 2018 MINUTES

MOTION by Rich, support by Barnette, to approve the Zoning Board of Appeals meeting minutes of May 8, 2018.

MOTION CARRIED 7-0.

ADJOURNMENT

MOTION by Vergun, support by King, to adjourn the meeting at 8:20pm.

MOTION CARRIED 7-0.

Respectfully submitted,

Erik Lindquist, Secretary
Zoning Board of Appeals

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