

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
FARMINGTON HILLS CITY HALL – COUNCIL CHAMBER
31555 W. ELEVEN MILE ROAD
FARMINGTON HILLS, MI
October 11, 2022 – 7:30 PM**

CALL MEETING TO ORDER

Chair Lindquist called the meeting to order at 7:34 P.M.

Members Present: Irvin, Khan (Alternate), King, Lindquist, O’Connell, Rich, Vergun

Members Absent: Masood

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

Chair Lindquist made standard introductory remarks explaining the role of the ZBA and the formal procedures of the meeting.

Board Members held a site visit on October 9, and may also have visited the sites independently. No action was taken at the site visit.

APPROVAL OF AGENDA

MOTION by Rich, support by O’Connell, to approve the agenda as presented.

Motion approved unanimously.

OLD BUSINESS

A. ZBA CASE: 7-22-5710
LOCATION: 29509 Orchard Lake Road
PARCEL I.D.: 23-03-477-056
REQUEST: In a B-3 Zoning District, to construct a gas station/convenience store, the following variance is requested: 1. A 5-foot variance to the required 10-foot west side yard setback requirement.
CODE SECTION: 334-3.1.25. E.
APPLICANT/OWNER: Aly Bazzi, Member, Bazco Holdings, L.L.C.

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property was located north of 13 Mile on Orchard Lake Road in a B-3 zoning district. The applicants were proposing to construct a gas station/convenience store. A letter had also been submitted from the adjacent property owner.

Uldis Vitins, Vitins Engineering, 44275 Brandywine Road, Canton MI was present on behalf of this application for a 5-foot variance to the required 10-foot west side yard setback requirement. Aly Bazzi, 30825 26 Mile Rd, New Haven MI was also present.

Mr. Vitins made the following points:

- The site was tight.

- The existing building was built on the north property line, which also would have required a variance.
- The building size would not be increased from the previous application.
- The variance would improve fuel delivery and fire department access in front of the building.
- The variance would make access from 13 Mile Road more reasonable.
- The applicant removed a parking space in the southwest corner as recommended by the Planning Commission.
- The applicant complied with other requirements and changes as requested by the Planning Commission.
- The primary reason for the variance request was to improve circulation on the site.

In response to a questions from the Board, the applicants provided the following information:

- The applicants had previously asked for an 8.5' variance. That request had been adjourned to give the applicant time to work with their neighbors. Subsequently the request had been reduced to a 5' variance because the adjacent property owner thought an 8.5' variance would result in the building being too close, but did not have a problem with a 5' side yard setback. The applicant would prefer the larger variance in order to provide greater maneuverability, but they were trying to work with the adjacent property owner.
- The existing building was built on the northern property line. The proposed building would not be the same size as the existing building, but would be the same size as previously proposed when the 8.5' variance was requested.
- The applicant planned to construct a new building and install new fuel tanks. The applicant was also working with the Fire Department to install a fire hydrant on the property. The new building would be bigger than the existing building.
- The applicant did not plan on having a liquor license. The applicant's business model was designed around selling convenience items.

In response to a question from Chair Lindquist, Zoning Supervisor Randt said a variance had been granted in 1990 for the existing building.

Chair Lindquist opened the public hearing. Seeing that no public indicated they wished to speak, Chair Lindquist closed the public hearing and brought the matter back to the Board for discussion and/or a motion.

Secretary O'Connell said that the variance request had not been re-noticed.

Member King noted that the Board had received a letter from the adjacent property owner, Himaloy LLC. that indicated they did not object to a 5-foot variance to the required 10-foot west side yard setback requirement, as requested by the applicant.

MOTION by King, support by O'Connell, in the matter of ZBA Case 07-22-5710, 29509 Orchard Lake Road, Parcel I.D.: 23-03-477-056, that the petitioner's request for a 5-foot variance to the required 10-foot west side yard setback requirement, in order to construct a gas station/convenience store, be **GRANTED** because the petitioner did demonstrate practical difficulties exist in this case in that they set forth facts which show that:

1. Compliance with the strict letter of the ordinance would render conformity with the ordinance unnecessarily burdensome.

2. That granting the variance requested would do substantial justice to the petitioner as well as be consistent with justice to other property owners in the district; the neighboring property owner has indicated acceptance of the proposed 5-foot variance.
3. That the petitioner's plight is due to the unique circumstances of the property. This is a very tight existing site, and the petitioner is working diligently to improve the site and needs to work within existing site constraints.
4. The problem is not self-created, but is the result of existing site conditions.

With the following condition:

1. The construction of the gas station/convenience store be as indicated on the submission materials in terms of construction, dimensions, setbacks, materials, and location.

Motion carried unanimously by voice vote.

NEW BUSINESS:

- A. ZBA CASE: 10-22-5716
LOCATION: 30825 Orchard Lake Road
PARCEL I.D.: 23-03-226-028
REQUEST: In a B-2 Zoning District, due to non-conformities resulting from the acquisition of right-of way to implement the Orchard Lake Road Reconstruction project, the following variances are requested.
1. A variance of ten (ten) feet to permit a zero (0) -foot parking setback where a ten (10)-foot setback is required.
 2. A variance of 12.4 percent to permit 7.6 percent front yard open space where twenty (20) percent is required.
 3. A variance of ten (10) feet to permit a zero (0) -foot landscaped area abutting a street where ten (10) feet is required.
 4. A variance of twenty-one (21) feet to permit a freestanding sign twenty-nine (29) feet in height where eight (8) feet is the maximum height permitted.
 5. A variance of 126 feet to permit a 190-square foot free-standing sign where sixty-four (64) square foot is the maximum area permitted.
 6. A variance to permit three (3) freestanding signs on a zoning lot with greater than 300 square feet of frontage on a throughfare where two (2) signs are the maximum number permitted.
- CODE SECTION: 34-3.5.2. J, 34-3.1.24. E, 34-3.5. V, 34-5.5.3.A.iv.k, 34-5.5.3.A.iii.e, 34-5.5.5.C.
APPLICANT: Board of County Road Commissioners of Oakland County
OWNER: ATMF VI, LLC Bloomfield Hills, MI

City Attorney Morita explained that requests 4-6 should be heard as requests for Special Exceptions because they related to signs, and should be acted upon separately from variance requests 1-3. The Special Exception standard was a lesser standard than a variance standard, and therefore the request for Special Exceptions could be heard this evening.

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property was located at 14 Mile and Orchard Lake Road, in a B-2 zoning district. The applicants were seeking to implement the Orchard Lake Road Reconstruction project.

Attorney Alma Sobo, Dickinson Wright, PLLC, was present on behalf of this application. Consultant Doug Lewan, Carlisle Wortman, was also present.

Ms. Sobo made the following points:

- The need for a variance arose in connection with the Orchard Lake Reconstruction project. The project included the reconstruction of about a quarter mile of Orchard Lake Road between 13 Mile Road and 14 Mile Road, in connection with the Road Commission's construction of a roundabout.
- The roundabout that would result from the project would improve vehicular and pedestrian traffic in the corridor and would maintain access to the shopping centers east and west of Orchard Lake Road.
- The property at issue with respect to the variance and special exception request was owned by RPT Realty L.P., 20750 Civic Center Drive, Suite 310, Southfield MI 48076.
- The tenants of the shopping center at issue currently included Alta, TJ Maxx, Bed Bath & Beyond, Old Navy, Marshall's, Home Goods, and others.

Mr. Lewan made the following points in regards to the three variance requests:

- The first variance request was to allow a 0-foot parking setback rather than the required 10-foot setback.
- The second variance request was to allow a 20-foot front yard open space to be made more non-conforming by the reduction of the parking setback. The front yard open space would be reduced from 8.9 percent to 7.6 percent.
- The third variance request was to allow a 0-foot landscape area rather than the required 10-foot landscape area.

Practical difficulty

- The practical difficulty in this case was unique to this property, due to the fact that the road was being improved by the Road Commission. The variances were not requested by the property owner, but by the Road Commission.
- The situation was created by the need for a roundabout.
- The need for a roundabout was determined by the Road Commission to improve safety of the site and to improve entrance access to the property.

Substantial Justice

- Other property owners on Orchard Lake Road have the right of safe and convenient access to their property.
- This project would provide the same property rights that other property owners have within that part of the City.
- The reduction of the 10-foot parking and landscaping setbacks and the minor reduction of the overall front yard open space were required to improve circulation in and out and around the property, which would help provide the property owner the same rights as other properties.
- Other parcels in the area do not meet the 10-foot parking and landscaping setback requirement.

Adverse Effect

- The project would result in the reduction of the required 10-foot setback between the property parking lot and the new-right-of-way. The setback was 0 feet at the nearest width and construction was directly adjacent to those areas.
- The distance between the back of the curb and the parking lot would be between 15-feet and 66-feet, so there would still be a green area between the road and the parking lot, even with a 0-foot setback.

- As shown on submittal documents, there were ~116 parking spaces on 15 nearby properties on Orchard Lake Road that encroached into the required 10-foot setback.

Future Land Use Plan

- The variances would not impact the City's Future Land Use Plan.
- The Master Plan specifically talked about the challenges of Orchard Lake Road, and stated that improvements to Orchard Lake Road should be considered.

Mr. Lewan made the following points relative to the Special Exception requests:

- The special exception requests were unique to the property and were not self-created.
- The construction of the roundabout created the need to relocate the existing pylon sign, which had been there for many years.
- The applicant was not requesting a new pylon sign because the sign would be less expensive than a conforming alternative.
- The proposed sign special exception would help maintain an existing property right that was currently non-conforming and had been present on the site for many years.
- Maintaining the sign that had been there for years or allowing three signs instead of two signs would not be inconsistent with the spirit and intent of the zoning chapter.
- Shopping centers with 300 feet of frontage were allowed to have two ground signs. This shopping center had about 1300 feet of frontage, which should be considered when determining whether to allow three ground signs and the continuation of the pylon sign as proposed.
- The special exception requests would not compromise health, safety, and welfare and would not negatively affect the character of the area.
- The applicant was proposing to modernize the existing large, non-conforming pylon sign that had been in that location for years, and move it to a location outside the influence of the roundabout.
- There were currently three ground signs on the property which the applicant was proposing to modernize.

Member Rich suggested acting on the first 3 variance requests before discussing the special exception requests. Chair Lindquist agreed with this suggestion.

Chair Lindquist opened the public hearing. Seeing that no public indicated they wished to speak, Chair Lindquist closed the public hearing and brought the matter back to the Board for discussion and/or a motion.

Secretary O'Connell said there was an affidavit of mailing with 18 returns.

MOTION by Rich, support by O'Connell, in the matter of ZBA Case 10-22-5716, 30825 Orchard Lake Road, Parcel I.D. 23-03-226-028, that variance requests 1, 2, and 3 **be GRANTED** as follows:

1. A variance of ten (ten) feet to permit a zero (0) -foot parking setback where a ten (10)-foot setback is required.
2. A variance of 12.4 percent to permit 7.6 percent front yard open space where twenty (20) percent is required.
3. A variance of ten (10) feet to permit a zero (0) -foot landscaped area abutting a street where ten (10) feet is required.

Because:

The petitioner did demonstrate practical difficulties exist in this case in that they 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 conformance with the ordinance unnecessarily burdensome.
2. That granting the variance requested does do substantial justice to the petitioner as well as to other property owners in the district.
3. That the petitioner's plight is due to the unique circumstances of the property.
4. The problem is not self-created.

Specifically, a serious safety issue was identified with respect to Orchard Lake Road itself that has resulted in the recommendation of the Road Commission to have a roundabout located in the location suggested. That is not something that the property owner would have had control over. The variance requests meet the definition for practical difficulty for the property owner.

Motion carried unanimously by voice vote.

The Board now discussed the three requests for special exceptions (items 4, 5, and 6).

In response to questions from the Board, the applicants provided the following information:

- There were originally two large freestanding pylon signs on the property. One was the old TJ Max/Dollar Tree Sign. The other was the old Marshalls Home Goods/Bed Bath and Beyond sign. The third was a smaller ground sign located at the north part of the site. The sign under discussion would be a third sign.

City Attorney Morita explained that the sign that was being replaced was gone. The two other signs were permitted, and the applicants were asking for a special exception to have a third sign

- The applicants did not have a specific answer relative to how the Road Commission was addressing traffic safety issues at the McDonald's entrance and the Orchard Lake Road/Mulfordton Street intersection, which were the locations most prone to traffic accidents per the submittal documents. However, the roundabout was being placed in a location that the Road Commission felt would best address the overall traffic accidents and impact of that segment of Orchard Lake Road.
- Both of the existing signs were non-conforming, relative to height and area. The special exception was only being requested for the sign that was impacted by the roundabout. The proposed sign would be similar to the previous sign, except it would be more modern.
- There were two pictures of pylon signs provided. The one being acted on tonight was the sign that was 29' tall.
- A second 30'5" sign noted on the plans was not under discussion this evening. The applicants were only addressing the replacement of a sign impacted by the roundabout.
- The two existing signs were both nonconforming. They were not being considered tonight.

Member Rich thought the proposed sign location was closer to the roundabout than the sign that was removed.

Ms. Sobo said the proposed general location of the new third sign was based on communications with the owner of the property and wanting to meet the owner's desire for the relocation necessitated by this project.

Chair Lindquist expressed a concern regarding request 6, which was to permit three signs on the entirety of the property, and noted that the other proposed signs should be part of the Board's consideration.

City Attorney Morita agreed that it would have been helpful to have measurements for all three of the proposed signs, but noted that the measurements of the existing two signs were not before the Board this evening.

In response to a question from Member O'Connell, City Attorney Morita explained that there were four standards for the Board to consider, as provided. The special exception standard was lower than the variance standard. The Board needed to consider all four special exception standards, and especially number two, that failure to grant relief would result in substantially more than mere inconvenience or financial expenditure. The situation was not created by the property owner. The property was a large retail property with a lot of tenants, where there was an expectation to see signage. If the property could be split into three or more parcels, then there could be multiple signs – one for each parcel.

Member King noted that there were four signs indicated in the submittal package. There were two pylon signs and two ground signs. One of the ground signs was a municipal sign that was being proposed to be turned into a Hunter Square sign.

City Attorney Morita suggested postponing the special exception requests until the next meeting to give staff a chance to look at the requests in more depth. There appeared to be confusion regarding the number of signs, and the extent of the special exception being requested in light of the other signs.

Member Vergun noted that all of the proposed signs would increase in size and the 2 largest signs were changing in style from mostly see-through to fully opaque. He supported postponing the special exception requests.

Member Rich raised a safety concern regarding the new pylon sign being located at the driveway that was at the roundabout, where cars would not stop. Trying to read the sign while being in the roundabout could be a dangerous distraction. He would like some confirmation that the sign being located where proposed was safe.

MOTION by Rich, support by O'Connell, in the matter of ZBA Case 10-22-5716, 30825 Orchard Lake Road, Parcel I.D. 23-03-226-028, that special exception requests 4, 5, and 6 **be adjourned** to date certain, specifically November 15, 2022, in order to give the applicant time to provide clarifying information relative to the number of signs; the size, color, design, and dimensions of the signs; analysis of any traffic impact of the sign locations; an overall free-standing signage plan; and other information that may be requested.

Motion discussion:

Ms. Sobo made the following points:

- The municipal sign was not one of the two existing signs being considered.
- The applicant was only seeking one special use exception with respect to the only sign that was impacted as a result of the Road Commission's project, which should be viewed in light of the existing non-conforming sign and not on any supplemental information that the applicant provided for purposes of completeness.

- The applicant's engineer HRC had staked the location for the proposed replacement sign, and the applicant had been in discussion with engineers throughout the process with respect to where the replacement sign might be located.

In response to a question from City Attorney Morita, Ms. Sobo noted that an updated engineering study had been completed and submitted to MDOT and Federal Highway Authority as part of the ongoing project compliance process. Ms. Sobo agreed to provide the engineering study to the City.

Chair Lindquist observed that even though some of the information was informational only, the Board had to take the information into consideration, and noted that even though the Road Commission's only concern was the sign that was removed to construct the roundabout, the Board owed some consideration to the owner's overall signage plan before granting additional sign space on the property.

Ms. Sobo noted that the fourth special exception criteria factor stated that the request should be taken on its own or in combination with other existing conditions, and noted that the request should not be considered with the supplemental information that was included for the sake of completeness as part of the application packet.

Chair Lindquist noted a concern that the larger signs and the opaque wraparound on each of the signs would block a view of the area, and reiterated that all of the information should be taken into consideration.

City Attorney Morita reviewed the items the Board wanted further clarification regarding: information relative to the number of freestanding signs; the size, color, design, and dimensions of the signs; whether the request was increasing a nonconformity, how many signs are permitted on the property, analysis of any traffic impact of the sign locations; an overall free-standing future signage plan, including how much more square footage was being requested, and the square footage of the sign that was removed.

Motion carried unanimously by voice vote.

B. ZBA CASE: 10-22-5717
LOCATION: 30000 Grand River
PARCEL I.D.: 23-35-201-009
REQUEST: In order to construct a drive-in restaurant in a B-3 zoning district adjacent to a RA zoning district where the drive-in use is not separated from the lot by a major or secondary throughfare, the following use variance is requested:
1. A use variance to permit a zoning lot to be occupied by a drive-in use abutting an RA District where the zoning lot is not separated from the RA-District by a major or secondary throughfare.
CODE SECTION: 34-4.35.1.C
APPLICANT: Nickolas Shango
OWNER: Masoud Shango (West River Shopping Center)

As the applicant was not present, the Board discussed process going forward. Five affirmative votes were necessary in order to grant a use variance. The members sitting on the case this evening would need to return to the next meeting, should the case be opened and then adjourned. As there were public present to speak relative to this case, Chair Lindquist opened the case and invited Supervisor Randt to make his presentation.

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property was located on Grand River Avenue and Purdue Avenue, in a B-3 zoning district adjacent to an RA-4 zoning district. The applicants were seeking to construct a drive-thru Starbucks at this location.

Chair Lindquist opened the public hearing.

Susan Johnson, 21845 Purdue Avenue, opposed the variance request. An entrance and exit on Purdue would result in access from the Target parking lot to Purdue Avenue. Purdue was not constructed or designed to handle traffic from Starbucks and the entire Target shopping center.

Ed Wright, 21876 Purdue Ave, stated that he had lived on Purdue Avenue for 50 years and he opposed the variance request. He was concerned that Starbucks customers would use Purdue Avenue as a way to avoid a U-turn to access M-5.

Paul Waugh, 22001 Colgate Street, owned a house on Purdue. He opposed the variance request for reasons already stated.

City Attorney Morita noted that the Board had received a letter relative to this case from Edward Chaczyk, 21965 Purdue Avenue. Board members had read the letter individually. Mr. Chaczyk opposed this variance request.

Member O'Connell said there was an affidavit of mailing, with no returns.

MOTION by Rich, support by O'Connell, in the matter of ZBA Case 10-22-5717, 30000 Grand River, Parcel I.D.: 23-35-201-009, to adjourn the remainder of the hearing to date certain, specifically November 15, 2022.

Motion carried unanimously by voice vote.

PUBLIC QUESTIONS AND COMMENTS:

None

APPROVAL OF MINUTES July 12, 2022 and September 13, 2022

MOTION by Rich, support by King, to approve the July 12, 2022 and September 13, 2022 meeting minutes as submitted.

Motion carried unanimously by voice vote.

ADJOURNMENT

MOTION by O'Connell, support by Irvin, to adjourn the meeting at 9:23 p.m.

Motion approved unanimously.

Respectfully submitted,

Michael O'Connell, Secretary

/cem