

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
MAY 9, 2017**

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, Barringer, Lindquist, Rich, Seelye, Stevens and Vergun

Members Absent: Masood

Others Present: Attorney Morita and Zoning Division Representative McGuire

SITE VISIT MAY 7, 2017

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 McGuire noted that the Code Section numbers published for ZBA Case 5-17-5612 are incorrect; the correct Code Section numbers are Section 34-5.5.3.A.iv and Section 34-5.5.3.A.iii.e.

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

MOTION CARRIED 7-0.

NEW BUSINESS:

- A. ZBA CASE: 5-17-5611
LOCATION: Fourteen Mile
PARCEL I.D.: 23-02-101-062
REQUEST: A variance from the requirement that a drive-in restaurant in a B-3 District not abut an RA district unless separated by a major or secondary thoroughfare.
CODE SECTION: 34-4.35.1.C.
APPLICANT: 14 Orchard Plaza, L.L.C.
OWNER: 14-Orchard Plaza, L.L.C.

Utilizing overhead slides, Zoning Division Representative McGuire gave a brief description of the property, noting that this parcel was rezoned to a B-3 district in January 2017 by City Council and the request is to seek a variance from the requirement that a drive-thru restaurant in a B-3 district not abut a RA district unless separated by a major or secondary thoroughfare; the street in question, Greening Street, is defined as a local street. She explained that this location is one that has seen a lot of activity lately

including the new roundabout construction, rezoning so that the entire parcel is B-3 and several new businesses.

Zoning Division Representative McGuire stated that the owners recently went to the Planning Commission to request site and landscape plan approval for a drive-thru restaurant, as drive-thru restaurants are a principle use in a B-3 district, and at that time the site was reviewed for all zoning requirements including stacking spaces and traffic flow and during the review it was discovered that this entire B-3 parcel abutted a RA-4 parcel which is currently being used as a non-conforming commercial use; a parking lot for Langan's Nor-West Lanes where temporary sales are often conducted. She added that the entire shopping center is located between the proposed drive-thru use and the RA-4 lot, though this drive-thru would replace an existing drive-thru, the existing use was a drive-thru for a bank and the regulation regarding abutting a residential district is specific to a restaurant. She suggested that if the Board saw fit to grant this variance, the motion needs to be very specific to these conditions and this parcel.

Attorney Morita commented that this particular parcel is separated from the residential parcel by a street, and from the City Attorney's perspective what the Board is looking at is a variance from the size of the street that is required; right now it is a secondary thoroughfare under the ordinance and in this case the street is just a local street, and that is the only variance issue that the Board needs to look at.

Roger Sherr, representing 14-Orchard Plaza, LLC, 31300 Orchard Lake Road, explained that they are seeking a non-use variance for the development of a drive-thru restaurant located on the west side of the shopping center. He stated that approximately 25 years ago they built the shopping center and continued to beautifully maintain the center and have recently re-landscaped and installed a Welcome to Farmington Hills monument sign on the southeast corner of the property, and they are now seeking to construct a drive-thru restaurant.

Mr. Sherr explained that under the ordinance it is reasonable to restrict a drive-thru restaurant on a property that abuts a residential district, however, in this case there really is no residential district so there is no reason for the restriction. He stated that the restriction unreasonably prevents them from constructing a permitted use which otherwise meets all other requirements of the ordinance.

Mr. Sherr stated that the granting of the variance would do substantial justice because the restaurant they are seeking to construct complements the non-food tenants of the shopping center and also meets the underlining B-3 zoning category for this district. He explained that the plight is due to the unique circumstances as the residential district across the local street is not being used for residential purposes, nor will it ever be used for residential purposes, it is being used for commercial purposes and should have been rezoned. He added that the City has permitted it to be used for commercial purposes and it is master planned for commercial use and will likely be developed in a nonresidential manner.

Mr. Sherr commented that they did not create this hardship; it is unfortunate that they happen to be next to this nonconforming property which is currently being used seasonally for the sale of Christmas trees and summer annuals, as well as for a parking lot to serve the over-parking needs of the bowling alley. He noted that the spirit of the ordinance is well served by the granting of this variance and the proposed use is in harmony with the commercial nature of the area and consistent with the zoning.

Chair Seelye asked if the existing bank will be remodeled or torn down. Mr. Sherr responded that the current bank has an arm which accommodates 4 drive-thru lanes, that arm will come down and that is where the new drive-thru restaurant will be built with only one drive-thru lane.

Chair Seelye questioned if the restaurant will be just a drive-thru and if they have a tenant. Mr. Sherr responded that it will be a drive-thru and they are talking to several possible tenants.

Member Lindquist asked if, to the west and the north on the renderings, that is an outdoor seating area. Mr. Sherr responded yes, there will be some indoor and outdoor seating.

Member Vergun asked if the plan has been through all other approval channels. Mr. Sherr responded that it had.

Member Barringer questioned if the large sign that sits to the west of the bank drive-thru will be changed. Mr. Sherr responded that the pylon sign will come down and the area will be regraded and a more attractive monument sign will be installed for the property.

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

Member Stevens confirmed there was an affidavit of mailing on file with 19 returned mailers.

Attorney Morita explained that the Board should be factually specific in terms of making sure that they indicate that there is a road, the size or title of road, as not being a secondary thoroughfare, and that the property on the other side of the road is not used for residential purposes and is not master planned for residential purposes. She stated that the real issue here is the fact that this proposed drive-thru is not abutting a major or secondary thoroughfare so the nonuse dimensional variance the Board would be granting would be from the named size of the road. She added that the Board should also be specific on where the drive-thru restaurant is located and that it be built according to the plans provided and in the location as presented.

MOTION by Stevens, support by Lindquist, in the matter of ZBA Case 5-17-5611, to GRANT the petitioner's request for a variance from the requirement that a drive-in restaurant in a B-3 District not abut an RA district unless separated by a major or secondary thoroughfare; because the petitioner did demonstrate that practical difficulties exist in this case:

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.
3. That the petitioner's plight is due to the unique circumstances of the property.
4. That the problem is not self-created.

Furthermore, the property is separated by a local street, the residential property across the local street is currently a nonconforming use of a commercial purpose, the residential property is master planned for commercial, and the drive-thru restaurant is located on the opposite side of the property to the farthest west extent and separated by the existing commercial building. The location of the drive-thru restaurant on 14 Mile Road, Northwestern Highway and Orchard Lake Road roundabout is unique as it is an extremely heavy traffic and commercial area.

SUBJECT to the condition that the single drive-thru restaurant be constructed and located as depicted in the plans included in the Board's packet.

MOTION CARRIED 7-0.

- B. ZBA CASE: 5-17-5612
LOCATION: 30833 Northwestern Highway
PARCEL I.D.: 23-12-126-049
REQUEST: In order to install a second freestanding sign in an OS-3 Zoning District, the following special exceptions are requested: 1. A 22.8 square foot special exception to the maximum area of 19.2 square foot for a second freestanding sign. 2. A 1.67 foot special exception the 6 foot maximum height.
CODE SECTION: 34-5.5.3.A.iv, 34-5.5.3.iii.e.
APPLICANT: Kaufman Financial
OWNER: K.H.A. Associates

Zoning Division Representative McGuire noted that this is the first case that has come before the Board that involves allowing a bonus size and she offered a brief description of the ordinance.

Attorney Morita commented that City's sign ordinance was amended as of January 2, 2017 and the Board will be seeing some changes from the old ordinance to the new ordinance and this bonus situation is one of those changes.

Zoning Division Representative McGuire gave a brief explanation of the new ordinance, referencing Section 34-5.5.3.A.iii.e on page 5-22 "*Where the zoning lot has greater than three hundred (300) feet of frontage on a given thoroughfare, one additional freestanding sign shall be permitted on that frontage. The maximum size of the additional sign shall not exceed fifty (50) percent of the maximum freestanding sign area for the zoning lot in that district. The second sign shall be located not less than one hundred (100) feet from the principal sign.*" She stated that per the OS-3 district the maximum size allowed is 32 square feet, so the proponent would have half that, 16 square feet, for a second sign, although, per Section 34.5.5.3.A.vii on page 5-24, there are five design standard incentives to encourage high-quality design and foster greater aesthetic unity within the City, and these are brand new in the ordinance for free standing signs, and the City believes that these design standards have been met by this proposal and as a result they would be allowed a bonus 20% which would bring the sign up to 19.2 square feet, however, the special exception requested is for another 22.8 square feet.

Utilizing overhead slides, Zoning Division Representative McGuire gave a brief description of the property, stating that the application is before the Board because they want to install a second free standing sign that is 42 square feet, therefore, the special exception request is for 22.8 square feet and they are also asking for a height special exception of 1.6 feet above the 6 foot height maximum.

Noah Birmelin, Grissim Metz Andriese Associates, 300 East Cady Street, explained that they are seeking the variances for the sign as Kaufman Finance utilizes both this property and the property to the north and they are looking to bring together a corporate campus identity, which they have already done internally with walkways and new landscaping to link the buildings. He stated that the sign itself is more of a sculptural piece with the background of the landscape complimenting the sign; it is sleek aluminum with fiberglass sides and internal lighting providing a warm glow at night, it sits on a brick wall which complements the brick on the building, it is located outside of the clear vision zone and will create a uniform connection with one main entrance.

Zoning Division Representative McGuire noted that the request is for special exceptions, not variances.

Chair Seelye asked the proponent to explain why they needed a sign two times the size and 1.6 feet higher than what is allowed. Mr. Birmelin responded that if this was the only sign on the property it would be very close to what is allowed but the second sign has to be half of that, as there is already a tenant sign on the property which then makes this the secondary sign. He stated that by ordinance they could not have a campus identity sign unless it is very small and would then be unreadable, defeating the purpose of what they are trying to accomplish.

Mr. Birmelin explained that in this case, the sign is for both properties and in terms of the height, they are trying to bring it to pedestrian eye level, from a car it is a little bit taller but it stands out and does not get swallowed up in the landscaping.

Member Lindquist questioned why the additional height was to be higher than pedestrians on Northwestern Highway. Mr. Birmelin responded that if you look at it from someone walking, the Kaufman letters would be eye level and if they bring it lower the wall would get shorter and it would fade into the landscaping.

Member Lindquist noted that if it was lowered it would be approximately the height of a vehicle window as he suspects most of the traffic will be vehicular.

Mr. Birmelin commented that as proposed it will be eye level if you are in an SUV.

Member Rich asked, since they are trying to put together a corporate campus, is there any plan to connect the parking lots. Terry McCann, Director of Property Management for Kaufman, 9308 Barren Way, responded that they recently did a lot of work with the parking lots, repaving them and connecting them with a sidewalk but unfortunately because of the grade change between the buildings they were not able to connect the parking lots, so this gateway sign is their attempt to tie the two properties together. He stated that the buildings are two very different styles of architecture and there is not much they can do about that economically so they have installed monument signs at both buildings which are close in resemblance and this gateway sign will help draw the two properties and signs together into one corporate campus.

Member Vergun questioned if either of the tenant name signs will be removed. Mr. McCann responded that there are two different parcels and they do not intend to combine them into one and this gateway sign will sit on the headquarters building site. He noted that the property line for the building on the right does not allow much frontage to Northwestern Highway.

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

Member Stevens confirmed there was an affidavit of mailing on file with several returned.

Member Barnette commented that when driving by the two properties it is confusing and he understands why the proponent is trying to tie it together with a gateway entrance.

Member Vergun stated that he is worried about the proposed square footage of sign and combined property signs and whether this is out of desire or necessity, as with the use of technology today, call outs of businesses by the roadway seem to be less important than they used to be.

Attorney Morita reviewed the standards for a special exception with the Board as they were not included in their packet.

Special exception to this section may be permitted by the zoning board of appeals upon the following affirmative findings:

1. That the request is based upon circumstances or features that are exceptional and unique to the property and that are not self-created.
2. That the failure to grant relief will result in substantially more than mere inconvenience or financial expenditures.
3. That application of the regulations in this section without a special exception will unreasonably prevent or limit the use of the property or will unreasonably preclude the visibility or identification of a nonresidential building on the property.
4. That the special exception will not result in a sign or condition that is incompatible with or unreasonably interferes with adjacent or surrounding properties, will result in substantial justice being done to both the applicant and adjacent or surrounding properties, and is not inconsistent with the ordinance.
5. When taken on its own, or in combination with other existing conditions on the property or in the area, that the special exception will not result in a sign or condition that has an adverse effect on the essential character or aesthetics of the establishment or surrounding area, is detrimental to or negatively affects the character of surrounding residential development, or compromises the public health, safety or welfare.

Member Lindquist asked for clarification if those were factors for consideration or elements required. Attorney Morita responded that the Board must have affirmative findings to those factors in order to grant a special exception.

Member Lindquist asked if they must meet all of the elements. Attorney Morita responded that there are 5 findings and the proponent must have affirmative findings to all 5.

Member Vergun asked if the Board is able to grant only one of the special exceptions and leave it up to the petitioner whether they want to move forward with a plan that complies with the variance they did receive. Attorney Morita responded that whether the Board is granting a variance, or in this case a special exception, the Board does not have to grant both, they can grant one or the other, one at a lesser quantity and they can place whatever conditions they feel necessary. She noted that there is a time limit on the exception and if the proponent does not move forward within a specific amount of time with the exception that has been granted, then it is considered null and void, so the proponent would have the ability to not move forward if they so choose with the exception that has been granted.

Member Barringer questioned if they could grant item 1 with a lesser square footage. Attorney Morita responded that they can always grant less than what the proponent has asked for, but they can never grant more.

Member Barringer commented that the sign is awfully large in square footage and not in character with the rest of the office centers along Northwestern Highway.

Member Barnette noted that he supports the sign because of the special conditions with the two large pieces of property and that one of them does not have much frontage on Northwestern Highway.

MOTION by Barnette, support by Rich, in the matter of ZBA Case 5-17-5612, to GRANT the petitioner's request for the following special exceptions: 1) A 22.8 square foot special exception to the maximum area of 19.2 square foot for a second freestanding sign and 2) A 1.67 foot special exception the 6 foot maximum height; as the proponent has met the following requirements necessary for an exception in this case as set forth in Section 34-5.5.3.A.iv and 34-5.5.3.A.iii.e. of the Farmington Hills Zoning Ordinance:

1. That the request is based upon circumstances or features that are exceptional and unique to the property and that are not self-created.
2. That the failure to grant relief will result in substantially more than mere inconvenience or financial expenditures.
3. That application of the regulations in this section without a special exception will unreasonably prevent or limit the use of the property or will unreasonably preclude the visibility or identification of a nonresidential building on the property.
4. That the special exception will not result in a sign or condition that is incompatible with or unreasonably interferes with adjacent or surrounding properties, will result in substantial justice being done to both the applicant and adjacent or surrounding properties, and is not inconsistent with the spirit and intent of this chapter.
5. When taken on its own, or in combination with other existing conditions on the property or in the area, that the special exception will not result in a sign or condition that has an adverse effect on the essential character or aesthetics of the establishment or surrounding area, is detrimental to or negatively affects the character of surrounding residential development, or compromises the public health, safety or welfare.

SUBJECT to the following condition that the sign be of same size, materials, design and location as set forth in the application materials.

MOTION FAILED 2-5 (Barringer, Lindquist, Seelye, Stevens and Vergun opposed)

Member Lindquist commented that he voted against the motion because he cannot find any reasoning under finding #3 that would let him vote in support of the motion, "*That application of the regulations in this section without a special exception will unreasonably prevent or limit the use of the property or will unreasonably preclude the visibility or identification of a nonresidential building on the property*", and in fact they have held discussions in the past on the two current signs on the two properties and he understands that those have provided visibility and identification for the property so he cannot find that without a special exception the property owner is prevented or limited in the use of the property.

Member Lindquist stated that he believes that with the bonus rule the Kaufman Group could build the integrated campus look within the bounds of the rules, particularly with the bonus allowance for size based on the frontage on Northwestern Highway and without finding some reasoning to support granting a special exception under #3, he cannot vote in support even at a lesser amount of height or square footage.

Member Vergun commented that he agrees with Member Lindquist and he has a sense of pause with item #2 about substantially more than mere inconvenience or financial expenditures, as he feels that there are other improvements to the signage that could be done and he suggests further thought out plans by the proponent and reapplication.

Discussion was held on the need for another motion or to let the current motion stand and have the request fail due to lack of support.

Attorney Morita noted that the proponent has the option to go back to staff and see if there is a lesser size sign that they could come forward with as they can always come back to the Board with a different request. She stated that if the Board were to grant a lesser relief this evening, they would not necessarily know what the sign would end up looking like because the plans would not be before them.

Member Barnette asked if the existing two signs were removed and one sign put in at the entrance, would that make a difference in terms of the requirements. Attorney Morita responded that it would as to the one property with having one sign removed because they are two separate zoning parcels so what happens on the property located at 30903 Northwestern Highway is completely separate from the parcel where the sign is proposed and the request would then change if the current monument sign was removed or if they were to reduce the size of monument sign.

Chair Seelye informed the applicant that the motion has failed and suggested that they go back to the building department and work on another plan with the City.

PUBLIC QUESTIONS AND COMMENTS

There were no public comments.

APPROVAL OF April 11, 2017 MINUTES

MOTION by Barringer, support by Barnette, to approve the Zoning Board of Appeals meeting minutes of April 11, 2017 as submitted.

MOTION CARRIED 7-0.

ADJOURNMENT

MOTION by Rich, support by Vergun, to adjourn the meeting at 8:33pm.

MOTION CARRIED 7-0.

Respectfully submitted,

James Stevens, Secretary
Zoning Board of Appeals

/ceh