

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
JANUARY 9, 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, Barringer, Lindquist, Masood, Rich, Stevens and Seelye

Members Absent: Vergun

Others Present: Attorney Morita and Zoning Division Supervisor Randt

SITE VISIT JANUARY 7, 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

MOTION by Stevens, support by Rich, to approve the agenda as amended with Case A withdrawn.

MOTION CARRIED 7-0.

OLD BUSINESS

- A. ZBA CASE: 11-17-5623
LOCATION: 30055 Northwestern Highway
PARCEL I.D.: 23-12-476-006
REQUEST: In order to replace an existing 13.33 foot tall, 100 square foot sign with a 14 foot tall, 96.11 square foot freestanding sign in an OS-3 Zoning District, the following special exceptions are requested: 1. An 8 foot height special exception to the 6 foot height limit. 2. A 64.11 square foot special exception to the 32 square foot sign area.
CODE SECTION: 34-5.5.3.A.iv.
APPLICANT: Signs by Crannie
OWNER: Providence Hospital

Withdrawn by applicant

NEW BUSINESS

- B. ZBA CASE: 1-18-5624
LOCATION: 37000 Grand River Avenue
PARCEL I.D.: 23-20-300-029, -030

REQUEST: In order to construct a drive-thru restaurant and patio in a B-3 Zoning District.
1. 10 tree variance from the 10 tree requirement for the parking lot. 2. 3 tree variance from the 7 tree replacement tree requirement for the restaurant site. 3. Variance of 50 square feet from the permitted 400 square feet allowed for accessory outdoor seating to permit a 450 square foot patio.
CODE SECTION: 34-5.14.4.C.; 34-5.18.7.A.; 34-4.32.2.
APPLICANT: Thomas Duke of Duke & Duke, LP
OWNER: Duke & Duke, LP

Utilizing overhead slides, Zoning Division Supervisor Randt presented an aerial view of the property, plans depicting the proposed restaurant with a patio and the trees on the property along with a rendering of the proposed restaurant.

Lonnie Zimmerman, Siegal/Tuomaala Associates Architects, 29200 Northwestern Hwy, explained that the reasons they are asking for the tree variance is due to the size of the parcel which is .98 acres and because it is a unique site in that it is surrounded by 75 trees on the office parcel, in addition to the 7 existing trees on the corner parcel which are street trees planted by the owner, Mr. Duke, to go along with the other street trees. He stated that because of the size of the site, if they were to have the 10 trees required, as well as the 3 other trees, it would totally obscure the building. He noted that there is an overage of about 30 trees total onsite now and visually both sites appear together, no one will ever know where the property line is as it goes through the parking lot, so the trees read as one site and as one site they are beyond what the ordinance requires.

Mr. Zimmerman stated in regards to the outdoor seating, it was mentioned they requested a 50 square feet variance but it is 100 square feet as they asked for 500 square feet on the application, not 450. He explained that by ordinance 400 square feet is the maximum allowed and this unique location is not really adequately serving the building or area but is an opportunity to take the area, which is traditionally all cars, and give it a pedestrian life. He noted that 400 square feet is less than the requirement for some of the major tenants such as Starbucks.

Tom Duke, owner, 37000 Grand River Ave, explained that he built this 90,000 square foot office building in 1986 and it has performed well since that time and he recently purchased the Kmart center across the street and has developed and refurbished that area nicely. He stated that he is before the Board for one reason and that is due to getting a lot split which required him to recalculate the tree count for the site, and if he did not get a lot split he would not be here and the site would be over by 30-40 trees. He stated that the lender of the office building did not want to do a construction loan for the coffee shop, but were supportive of the concept and saw the added value to the site and area so they suggested getting site plan, zoning and lot split approval and then they would release the mortgage on that portion of the property, and this is what he has done.

Mr. Duke stated that they have gone to the Planning Commission and received site plan and lot split approval, subject to these variances. He explained that he has planted 86 trees since the building was built, which is over the ordinance requirement for a site of this size by 41 trees, and they now wish to construct a 2,000 square foot building on the site and the ordinance says because of the lot split more trees are required. He stated that it does not work well for a building of this size to add more trees; the parcel is a beautiful site with a lot of flowering trees and potentially a nice urban environment. He noted that the lot split requirement does not require to bring in additional drainage, or water storage because the existing site works for that, nor does it require additional curb cuts or a change in the circulation but it does, however, require another tree count which, in this instance, does not make much sense.

Chair Seelye questioned if the Planning Commission had signed off on this proposal. Zoning Division Supervisor Randt responded that the applicant had been to the Planning Commission and they have signed off, contingent on Zoning Board approval.

Chair Seelye asked if the City was ok with most of the trees being on the office building site. Mr. Randt responded that they had no problem with the trees but suggested that the Zoning Board consider the tree count going into a tree bank.

Mr. Randt explained that a tree bank is a fund that the City has that will allow for trees to be put in different areas to create a natural setting.

Member Lindquist asked if the tree bank was for the entire City, so that the trees could be planted on any public parcel. Mr. Randt responded that was correct.

Member Stevens commented that the agenda noted a 50 square foot variance request and the applicant mentioned it was for 100 square feet and the application also called out a patio area of 800 square feet. He questioned what number was correct.

Mr. Randt clarified that the Planner stated that the 450 square foot patio has been requested and asked if the applicant was requesting a larger patio.

Mr. Zimmerman explained that when they went to Planning Commission for site plan approval they indicated on those drawings a 450 square foot patio and when they submitted to the Zoning Board they requested a 500 square foot patio; he is not sure where the 800 came from.

Mr. Randt informed the applicant that this is an issue since the case was advertised at 450 square feet and if they want 500 square feet, it will have to be re-advertised and they will have to come back to the Board.

Attorney Morita noted that the Planning Commission has approved only a 450 square foot patio.

Mr. Zimmerman stated that it was his understanding that the Planning Commission approval was put on hold until the ruling from the Zoning Board, but if it was advertised at 450 square feet they will make that work.

Member Masood noted that the 800 square feet comes into play with the usable floor area and 400 square feet would be 50% of the usable floor area.

Mr. Zimmerman stated that was correct.

Member Masood questioned what 50 additional square feet would provide. Mr. Zimmerman responded that the 50 square feet gets them more outdoor seating; Starbucks requires 450 square feet of outdoor seating and from a functional standpoint the area along the southern edge where the patio is located is a 450 square foot area, as marked on the site plan, and it fits very comfortably between the landscaping and the building wall with access to the restaurant.

Member Masood asked if they considered 900 square feet as the usable floor area, so 50% would be 450 square feet and they would not need a variance. Mr. Zimmerman responded that the usable floor area is partly determined by parking and right now the site is at the maximum level it can be parked at, they do not have excess parking.

Member Rich noted that in addition to the number of trees, the ordinance talked about placement of trees and that they are to be distributed evenly throughout the paved area and the way these trees are currently setup is all along the perimeter. He asked if that is something that the Board needs to consider or is that for the Planning Commission to decide at site plan approval. Attorney Morita responded that this is one of the reasons they are before the Board; they are asking for a 10 tree variance from the 10 tree parking lot requirement, so essentially that would get rid of the spacing issue.

Attorney Morita clarified that this is a request for a 10 tree variance from the 10 tree parking lot requirement, and a 3 tree variance request from the 7 tree replacement requirement for the restaurant site, therefore, if the site plan was approved by Planning Commission with only 4 trees and not the 7 then the Board does not have to deal with it.

Mr. Duke mentioned that he owns a dozen buildings and in every instance all the tenants want to be outside, he cannot build enough patio space and places for people to get outside and take a break at any of his properties. He questioned why an ordinance would limit or argue 50-100 square feet, as everyone wants to get out of their office and be outside. He noted that this is an opportunity to have 250 people walk across the small parking area and sit outside in good weather and enjoy a cup of coffee.

Member Lindquist asked if the Board is able to condition the granting of the variance on contributions to the City's tree bank. Attorney Morita responded that it was a reasonable request as in other communities, especially Planning Commissions, when looking at site plans and someone wants to put fewer trees on the site they will approve but make the requirement of contributing to the tree fund for the extra trees. She noted that there is a standard rate that is applied on a per tree basis.

Member Lindquist asked the applicant, in the event the Board were to grant the variance to eliminate the 13 trees, if he would have any objection to contributing to the City's tree bank for the amount of the 13 trees.

Mr. Duke asked where the trees are planted.

Attorney Morita commented that the trees are placed in a bank and are likely to be planted on City owned right-of-way and are mostly street trees.

Mr. Duke stated that he was ok with making the contribution as it would an opportunity to plant an interesting species but questioned where the number of 13 trees was coming from. Member Lindquist responded that they are requesting a variance of 3 trees from the entire site placement requirement and a variance of 10 trees from the parking lot placement requirement.

Member Stevens questioned what goes into the calculation of the usable floor area. Mr. Zimmerman responded that for a restaurant it is only the area that the customers are using and in this case it is the seating area inside for the customers and the service line, which is why it is such a small percentage of the 2,000 square foot building.

Member Barnette questioned, when looking at the parking area where the coffee shop is proposed, if there are concerns with the loss of all those excess parking spaces. Mr. Duke responded that when he built the building the parking count was 305 spaces and when the banks left it added 25-30 additional parking spaces and the parking ordinance has also been reduced which makes this proposal possible. He noted that he is not concerned at all about the parking for the building.

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 4 returned mailers.

MOTION by Stevens, support by Rich, in the matter of ZBA Case 1-18-5624, to GRANT the petitioner's request for 1. 10 tree variance from the 10 tree requirement for the parking lot, 2. 3 tree variance from the 7 tree replacement tree requirement for the restaurant site and 3. Variance of 50 square feet from the permitted 400 square feet allowed for accessory outdoor seating to permit a 450 square foot patio; because the petitioner did demonstrate 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, with the specific point being that the site was all one site with proper trees, and in fact, more trees than what is required and that by essentially splitting this to allow for this use, he finds that the trees required per ordinance would present a burden to the petitioner.
2. That the petitioner's plight is due to the unique circumstances of this particular property, that the strict ordinance would be a burdensome with regards to the trees.

In addition, in regard to the variance for the 50 square feet for the additional patio space, due to the fact that the building itself is well over 2,000 feet the 50 percent requirement would allow that and the sidewalk space has not changed per the approve site plan from the Planning Commission.

SUBJECT to the condition that the proponent makes a contribution of 13 trees to the City's treebank prior to the issuance of a Certificate of Occupancy.

MOTION CARRIED 6-1 (Barringer opposed).

- C. ZBA CASE: 1-18-5625
LOCATON: 23850 Freeway Park
PARCEL I.D.: 23-30-276-007
REQUEST: In order to build an addition to a warehouse in an L1-1 Zoning District, the following two options are proposed:
Option 1. 1. A variance to permit 3 new parking spaces within the minimum front yard setback. 2. A variance from the 10 foot required landscape area, for four new parking spaces. 3. A variance from the required hedgerow or 2 foot wall for the new parking spaces. **Option 2.** 1. A variance to permit 2 new barrier free parking spaces within the minimum front yard setback: 2. A variance of four new parking spaces along Industrial Drive from the required 37 parking spaces for the office and warehouse uses.
- CODE SECTION: 34-5.2.1; 34-3.5.2.S.; 34-3.5.2.V.; 34-5.14.5.; 34-5.2.; 34-3.5.1.S. 34-5.2.11.
APPLICANT: Bennett Donaldson, JB Donaldson Company
OWNER: Don Selmi, D J & M Investments, L.L.C.

Utilizing overhead slides, Zoning Division Supervisor Randt presented an aerial view of the property, noting that the applicant was planning to expand the warehouse on the property and with that they need variances for the parking lot.

Chair Seelye noted that this is the first case he is aware of where the Board has had a request for 2 different options and asked how the Board goes about considering this case. Attorney Morita responded that the Board will have to consider whether or not they are more comfortable with option 1 in total or option 2 in total; when discussing the case the Board may want to first generally discuss which option is the better way to go and look at conditioning the variances, if granted, based on the option. She added that the Board does not need to vote on the option, just ask for a general consensus of which way the Board would like to go.

Becky Kline, Design Engineer, PEA Inc., explained that the proponent is looking to expand their existing warehouse; they have been in business at this location for 18 years with a small staff of 8 people and do not plan to add more staff, therefore, for their own use they do not need to add additional parking. She stated that the variances they are seeking are simply with the intent to try to meet the ordinance in some way and in order to meet the parking ordinance they have to violate something else, so they have come before the Board to ask what the Board's preferences is on how to solve this dilemma.

Ms. Kline explained that the proposed layout includes adding two ADA spaces in the front greenbelt closer to the entry to the office and additional parking spaces along Industrial Park to meet the ordinance. She added that because of the existing parking along that frontage, they are already grandfathered in as a violation of the current code, therefore, they are just continuing the same level of setback with the new parking, so in order to place those spaces there they would need the variance of the setback and not having the required hedgerow in front of it. She stated that for their use they would be happy to eliminate any or all of the parking then they would just need a variance on the total number of parking spaces required for the site and could turn that back into greenspace. She noted that they are closing the curb cut that exists on Freeway Park Drive and only keeping the one that will access the new warehouse addition, therefore that space is not needed.

Mr. Randt asked how many employees they currently have, if they will be adding employees and if they are utilizing all the parking spaces onsite right now. Ms. Kline responded that they currently have 8-9 employees and do not intend to add any additional staff and since it is an industrial use they do not have clients coming in and out.

Member Stevens questioned the total number of additional spaces they are trying to add. Ms. Kline responded that the site is being restriped as well as expanded so the variance request is for a total of 6 spaces; 4 added along the frontage of Industrial Park and 2 ADA spaces in the front greenbelt. She added that in terms of total parking, the site has approximately 20 spaces currently.

Attorney Morita commented that with option 1, the Board can condition those required spaces, as proposed, to be put into a land bank so instead of requiring the property owner to remove all the vegetation and put the parking spots in, the Board could grant the variances in option 1 with the condition that those spaces be land banked and kept green until such time additional parking is needed.

Chair Seelye noted that this solves a lot of issues for the proponent.

Member Lindquist stated that this option was more economical for the proponent as they would not have to put in the new parking spaces or reconfigure the lot unless or until they need additional parking and they do not expect they will for their continued use.

Attorney Morita explained that if there is a change in circumstances where they are starting to have problems because they do not have enough parking, they do have the variances available to put those spots in if needed. She noted this does not work for option 2.

Chair Seelye asked if any customers or salespeople visit the site. Scott Kreutzer, contractor, JB Donaldson, 37610 Hills Tech Drive, explained that the owner does not have customers that visit the facility but he does have sales people out on the road. He noted that the owner is a worldwide furnace builder and the majority of his business is overseas; the furnaces are very large and very time consuming to build and that is why his employee count is so low. He added that the owner has 4-5 fabricators and they spend months building one furnace and they do not have many visitors.

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 4 returned mailers.

Chair Seelye noted he preferred option 1.

Member Lindquist concurred that he too was for option 1.

MOTION by Lindquist, support by Barringer, in the matter of ZBA Case 1-18-5625, to GRANT the petitioner's request for **Option 1** - 1. A variance to permit 3 new parking spaces within the minimum front yard setback. 2. A variance from the 10 foot required landscape area, for four new parking spaces. 3. A variance from the required hedgerow or 2 foot wall for the new parking spaces; because the petitioner did demonstrate practical difficulties exist in this case and 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; the continued purpose is the same, it is just an expansion of the warehouse.
2. That granting the variance requested does substantial justice to the petitioner as well as to other property owners in the district or that lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to the other property owners; they are addressing this point in the plan to bank the construction of the new spaces until a later date, which provides the relief that is requested and does not change immediately the basic conditions of parking in front of the building on the Industrial Park side.
3. That the petitioner's plight is due to the unique circumstances of the property; this space with the short setback and the front parking for a warehouse is unique.
4. That the problem is not self-created; this is an area that has developed over time and this is a condition of the natural growth and development of the Freeway Industrial District

SUBJECT to the following conditions:

- The construction of the spaces be land banked so that the proponent may exercise the option and create the additional parking if and when those spaces are needed but the variance will continue to run with the land
- The spaces be maintained as green space unless and until the variance granted is exercised

- The spaces are to be constructed in accordance to the plans for Option 1 as presented to the Board and consistent with the current conditions and situations of the property

Member Rich questioned who determines when/if additional parking spaces are needed. Attorney Morita responded that the owner would likely determine if additional parking is necessary unless there is a code violation issue because they are parking on the street.

MOTION CARRIED 7-0.

D. ADOPTION OF PROPOSED BY-LAWS

The Board reviewed and adopted the proposed Zoning Board of Appeals By-Laws.

MOTION by Barnette, support by Masood, to approve the adoption of the Zoning Board of Appeals proposed By-Laws as presented.

MOTION CARRIED 7-0.

PUBLIC QUESTIONS AND COMMENTS

There were no public questions or comments.

APPROVAL OF NOVEMBER 14, 2017 MINUTES

MOTION by Stevens, support by Rich, to approve the Zoning Board of Appeals meeting minutes of November 14, 2017 as submitted.

MOTION CARRIED 7-0.

Members Stevens and Barringer noted that this was their last meeting. The Board appointed Member Lindquist as Secretary until the May election.

Chair Seelye thanked Members Stevens and Barringer for their great service to the Board.

ADJOURNMENT

MOTION by Rich, support by Stevens, to adjourn the meeting at 8:46pm.

MOTION CARRIED 7-0.

Respectfully submitted,

James Stevens, Secretary
Zoning Board of Appeals

/ceh