

MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
NOVEMBER 14, 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, Masood, Rich, Stevens and Seelye

Members Absent: Vergun

Others Present: Attorney Morita and Zoning Division Supervisor Randt

SITE VISIT NOVEMBER 12, 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 Supervisor Randt noted that the applicant for ZBA Case 11-17-5623 has requested to adjourn the case until the January 2018 ZBA meeting.

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

MOTION CARRIED 7-0.

OLD BUSINESS

- A. ZBA CASE: 9-17-5618
- LOCATION: 36025 W. Fourteen Mile
- PARCEL I.D.: 23-05-201-020
- REQUEST: A 2 foot variance to the 3 foot height limit is requested in order to retain a fence/gate and associated pillars 5 feet in height and 22 feet total length located in the front yard of an RA-1 Zoning District.
- CODE SECTION: 34-5.12
- APPLICANT/OWNER: Jayanth Koneru

Utilizing overhead slides, Zoning Division Supervisor Randt presented an aerial view of the property, photos of the gate and pillars during installation and photos after completion. He stated the gate structure is located in the front yard.

Chair Seelye asked if a permit was needed to build this gate. Zoning Division Supervisor Randt responded that the applicant applied for a permit but a permit was not granted.

Jayanth Koneru, 36025 14 Mile Road, explained they built a new house and when it was completed he wanted to put up a fence, he called the City and was told he cannot have a fence more than 3 feet in height so he dropped having a fence and only kept the gate portion since he was getting many cars in his driveway off 14 Mile Road. He stated that it was his understanding that a fence is different from a driveway gate. He is requesting to keep the driveway gate which is 16 feet wide and 5 feet in height.

Chair Seelye stated that the applicant was denied a permit for the gate and questioned why he built it anyway. Mr. Koneru responded that the Zoning Officer that came out told him to apply for the permit and it will be denied and then he can apply for the variance. He stated that he was under the impression that a gate was different from a fence and he did not need a permit.

Chair Seelye explained that two of the requirements needed to grant a variance are uniqueness to the property and that the issue is not self-created. He asked the applicant to explain to the Board how this is not self-created. Mr. Koneru responded that he did not understand the question; he only wants the gate for safety and security purposes as many people use his driveway off 14 Mile Road and he is often gone.

Zoning Division Supervisor Randt clarified for the applicant that the house is located on 14 Mile Road, in a very busy area, and the applicant wishes to have the gate for safety and security as he is gone for long periods of time.

Member Lindquist questioned if there is a difference in the security of a 3 foot gate to that of a 5 foot gate. Mr. Koneru responded that when he called the City they said a fence was required to be 3 feet, nothing about a gate so he was under the impression the gate was different than a fence.

Member Lindquist asked, assuming the Board does not grant the variance, if the applicant is prepared to reconstruct the gate to be in compliance. Mr. Koneru responded that he already spent a lot of money on the gate and it is already installed.

Member Lindquist stated that according to the photos in the Board's packet, on July 20th an inspector came and took photographs of the gate being constructed, and questioned why the applicant did not stop construction at the time he was notified that the gate was not compliant. Mr. Koneru responded that by the time he was notified the gate was completed. He added that the contractor had problems with the pillars and they had to be torn down and replaced and the gate was already installed at the time of the photos.

Member Lindquist asked if there is any definition of a gate inconsistent with that of a fence, and questioned the actual height of the top of the gate and top of the pillars, as there are different heights shown in the photo. Zoning Division Supervisor Randt responded that the pillars and gate are the same structure and the highest point at the top of the gate is 5 feet which is higher than the pillars.

Attorney Morita explained that there is no separate definition for gate, but a fence is defined as a manmade, unroofed barrier which may act as an enclosure or which is decorative or ornamental.

Member Lindquist asked the date on which the applicant was informed that the gate and pillars were not compliant with the ordinance. Zoning Division Supervisor Randt responded that the applicant was informed in July that he was not in compliance.

Member Lindquist commented that the photos provided in the Board's packet are date stamped July 20 and Mr. Koneru stated that those pillars were torn down and new pillars were built so that would have been after the applicant was notified that there was an issue with the ordinance.

Zoning Division Supervisor Randt stated that he believes the applicant is trying to say that the pillars were constructed with faulty material and had to be replaced.

Member Lindquist stated that he is not concerned with the initial construction of the faulty pillars but is concerned with the construction of pillars after the applicant was notified that the gate and pillars were not compliant.

Mr. Koneru explained that he believed the gate was the issue, not the pillars.

Member Lindquist noted that the pillars and gate are one structure.

Member Stevens questioned gates and decorative pillars at the entrances of subdivisions that are taller than 3 feet and how those apply differently than something like this. Zoning Division Supervisor Randt responded that some of the gates might be at the entrance to a specific subdivision, as entrances to subdivisions are looked at a little differently, and some may be nonconforming gates that have been an issue for many years.

Attorney Morita noted that the difference is the definition of a fence as in the ordinance, and what the purpose of the structure is, if it acts as an enclosure, decorative or ornamental, it is considered a fence. She added that pillars can be used for lighting and signage identifying the subdivision and that is perceived a little differently than a fence acting as a barrier.

Member Stevens stated that the one that comes to mind is somewhat new, located on 13 Mile and is a big stone wall with a gate.

Attorney Morita noted that the gate he is referring to did come before the ZBA and they have a variance.

Member Rich noted that when he was out at the property and walked next to the gate, at its highest point in the center when closed, it was taller than he is with his hand fully extended, so that is clearly higher than 5 feet and this case has only been advertised for 5 feet.

Mr. Koneru stated that the contractor told him it was a 5 foot gate and he is 6 foot tall and the gate is taller in the middle.

Member Rich commented that the arch is in fact higher than 5 feet and assuming the Board were to grant a 2 foot variance to allow for a 5 foot gate, the current gate would not be allowed.

Mr. Koneru stated that he purchased a 5 foot gate and the manufacturer said it was 5 feet. He added that there is an area underneath the gate.

Chair Seelye commented that he noticed the height as well and asked the City Attorney if that is an issue.

Attorney Morita stated that is was, as it has only been advertised for a 2 foot variance and the applicant appears to need a greater variance than that in order to keep the current gate, however, the Board does not

know how much of a variance is needed, therefore it should be re-advertised for the correct height, if that is what the applicant wants.

Chair Seelye notified the applicant if they were to grant the variance as advertised, he would have to replace or cut the fence so that it did not exceed 5 feet.

Attorney Morita explained that if the Board were to grant the variance as advertised, the gate would have to be modified and if the applicant decides to withdraw the request and come back with the correct height, there is no guarantee that the Board will approve the variance.

After further discussion with the Board, the applicant for ZBA Case 9-17-5618 stated he would like to withdraw his request and reapply in the future with the correct height of the gate.

NEW BUSINESS

- B. ZBA CASE: 11-17-5622
LOCATION: 29490 Grayfield
PARCEL I.D.: 23-26-430-015
REQUEST: A variance from the requirement that fences not to exceed 3 feet in height may not be placed in an exterior side yard setback in order to allow a fence 6 feet in height to remain in current location in an RA-4 Zoning District.
CODE SECTION: 34-5.12
APPLICANT: Charles F. and Karen L. Collins
OWNER: Charles Collins

Utilizing overhead slides, Zoning Division Supervisor Randt presented an aerial view of the property and photos of the 6 foot privacy fence at its new location. He noted that the case was heard by the Board previously, since that time the applicant has moved the fence inward 5 feet and the City Engineer has reviewed the new location of the fence and a letter is included in the Board's packet.

Mr. Collins, 29490 Grayfield, explained that this is their second appearance before the Board and last time they were told that one of the concerns of the City was that the location of the fence could be on City property which might create a liability. He stated that they are still confused since this is the fourth fence in the exact same location; the first one was when they purchased the house and it was a 3 foot chain link, then they installed an above ground pool and were required to install a 6 foot fence in the same location, over time that fence deteriorated and they replaced it and then that fence deteriorated they replaced with the current vinyl fence they would not have to maintain. He argued that the fence is not in their side yard, but in their backyard as their house faces south. He stated in order to eliminate the issue of the fence being on City property they have moved the west section of the fence 5 feet further into their backyard. He stated that they are hoping that the Board will grant the variance with the fence in the new location so they do not do any more damage to their yard. He added that his wife's efforts won a Beautification award and in the process of moving the fence they destroyed a magnolia tree and a lot of other vegetation.

Chair Seelye asked the applicant why the fence was built the last time without a permit. Mr. Collins responded that the first 6 foot fence they put up was permitted along with the pool and approved by the City, everything after that was just a replacement so in their mind they felt there was no need for a permit as the fence was already approved in that location.

Chair Seelye stated that he recalls the City could not find a permit for the first time the fence was built.

Zoning Division Supervisor Randt stated that they could not find the original permit and this is a very unusual situation where the property is located on Grayfield and if you go by the front of the house, it does not have a backyard because there is not 35 feet, therefore, it is a nonconforming house that had been added onto throughout the years. He stated the fence, where it was located before, was assumed to be in the right-of-way and that was an issue. He added that they have now pushed the fence back 5 feet so it is no longer considered to be in the right-of-way, according to the City Engineer.

Chair Seelye asked the applicant how this problem was not self-created. Mr. Collins responded that based on the history, the fence was approved in that location and they had no reason to think that it would not be approved again.

Chair Seelye indicated that they have no record of it being approved the first time.

Mr. Collins stated if it had not been approved they would not have been able to put the pool up as the fence was a condition to have the pool installed.

Chair Seelye asked if that was a requirement. Attorney Morita responded that she did not know what the ordinance said at that time and, as indicated in the minutes, the City does not have a record of them coming in for a permit for the fence, and she thinks it is important to note that even if they did get a permit for a prior fence, they have taken that fence down in its entirety and replaced it with something else, so they should have come in for a new permit.

Member Lindquist questioned if, the fence as it exists, is the same material and fence that was moved. Mr. Collins responded yes, they hired someone to move it and it is the same, only has new posts.

Member Lindquist informed the applicant they could have applied for this variance before the fence was moved without putting at risk the expense to hire someone to put the fence in the new location.

Mr. Collins commented that they were concerned with the fence being on City property so they wanted to move it.

Member Lindquist asked if the applicant felt it was appropriate to retain a 6 foot fence to protect access to the pool. Mr. Collins responded yes, as he is concerned about children drowning if they could get into the yard.

Attorney Morita stated that under BOCA currently the height requirement is 48 inches but she does not know what the height requirement was at the time the pool was first installed and the way that the City's Building Code works is they incorporate the BOCA standard into the City Building Codes by reference and the standard indicates a 48 inch height, but if that is an issue the Board would like to have resolved by the Building Department then it should be taken to them so they can write a specific letter to the Board advising them of what it should be.

Member Lindquist asked, without considering the nonconforming layout of this property, if someone had a regular RA-1 house on a lot with appropriately sized setbacks on all sides and a swimming pool would they be required to have a 4 foot fence. Attorney Morita responded that it appears that it would need a fence but there are properties where there is a pool in the middle of the yard and the fence is constructed just around the pool, and not the lot line of the yard because there are setback requirements for fences.

Chair Seelye opened the public portion of the meeting.

Tricia Lesondak, 22850 Tulane, explained that the fence has always been there, it is for the pool and no one has any issues with it and she does not understand what the problem is. She stated she is in support of the Board granting the variance.

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

Member Stevens confirmed there was an affidavit of mailing on file with 2 returned mailers.

MOTION by Lindquist, support by Stevens, in the matter of ZBA Case 11-17-5622, to GRANT the petitioner's request for a variance from the requirement that fences not to exceed 3 feet in height may not be placed in an exterior side yard setback in order to allow a fence 6 feet in height to remain in current location in an RA-4 Zoning District; 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. According to the applicant and in the absence of any record to the contrary, they were required to build the fence in order to construct the pool, so eliminating the fence renders conformity with the ordinance unnecessarily burdensome.
2. That granting the variance requested does substantial justice to the petitioner as well as to other property owners in the district. With the moving of the fence, it is consistent with the opinion of the Engineering Department which reviewed the current location of the fence and stated it was clear of interference of the public right-of-way and corner clearance. This grants substantial relief to both the owner of the property and other homeowners in reconfiguring and replacing the fence in the new location.
3. That the petitioner's plight is clearly due to the unique circumstances of this particular property. This property is unique in its configuration, size and being a corner lot.
4. That the problem is not self-created. In the absence of any evidence of the contrary, the initial issue, the presence of the fence, was not a problem created by the petitioner it was in fact, created by compliance with the initial permitting for the pool.

SUBJECT to the following conditions:

- The fence shall remain of the same materials and reasonably same appearance
- The fence shall be maintained and any replacement of the fence would have to come before the Board
- The fence shall be maintained outside of the right-of-way of Tulane, in its current location
- Any plantings or landscaping beyond the fence, toward the right-of-way, shall be subject to counsel and approval from the City Engineer to ensure they are outside of the right-of-way

MOTION CARRIED 7-0.

C. 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

Zoning Division Supervisor Randt stated that ZBA Case 11-17-5623 has requested to be adjourned to the January 9, 2018 ZBA meeting.

MOTION by Stevens, support by Barringer, in the matter of ZBA Case 11-17-5623, to adjourn the case to the ZBA Meeting of January 9, 2018, as requested by applicant.

MOTION CARRIED 7-0.

PUBLIC QUESTIONS AND COMMENTS

There were no public comments.

APPROVAL OF SEPTEMBER 12, 2017 MINUTES

MOTION by Masood, support by Barnette, to approve the Zoning Board of Appeals meeting minutes of September 12, 2017.

MOTION CARRIED 7-0.

PROPOSED 2018 ZBA MEETING SCHEDULE

MOTION by Rich, support by Masood, to approve the proposed 2018 Zoning Board of Appeals meeting dates.

MOTION CARRIED 7-0.

ADJOURNMENT

MOTION by Barringer, support by Masood, to adjourn the meeting at 8:29pm.

MOTION CARRIED 7-0.

Respectfully submitted,

James Stevens, Secretary
Zoning Board of Appeals
/ceh