

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
SEPTEMBER 13, 2016**

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

Members Absent: None

Others Present: Attorney Morita and Zoning Division Supervisor Randt

SITE VISIT SEPTEMBER 11, 2016

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 Barringer, support by Stevens, to approve the agenda as published.

MOTION CARRIED 7-0.

NEW BUSINESS:

- A. ZBA CASE: 9-16-5601
LOCATION: 23377 N. Stockton
PARCEL I.D.: 23-26-251-017
REQUEST: In order to build a sunroom in an RA-3 Zoning District, the following variances are requested: 1. A 2.7 foot variance to the required 8 foot side yard setback. 2. A 4.65 foot variance to the required total 20 foot side yard setback.
CODE SECTION: 34-3.1.6.E.
APPLICANT: Eric Brakke for Conservabuilders
OWNER: Janet Dabish

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos of the existing house and a site plan of the proposed sunroom. He noted that due to the location, the proposed sunroom is deficient in side yard setbacks.

Eric Brakke, Conservabuilders 32823 Woodward Ave, explained that when determining where to put sunrooms he has always found that as long as he does not encroach any closer than the house is already built, it is a safe bet however, when he applied for the permit he found that at some point the zoning category had been changed on this home which made the whole house non-conforming. He stated that initially they looked at what the options would be to have it conforming, so they moved the sunroom to

the north 3 feet but the electric meter base, power lines, telephone meter, water spout and kitchen window were in the way leaving that not a viable option. He stated that they decided to apply for a variance because they are not creating a bigger issue or a more non-conforming condition; they just want to continue the non-conforming condition that currently exists with the house.

Chair Seelye noted that he assumes that the home was built in compliance and questioned when the zoning requirements changed. Zoning Supervisor Randt responded that the zoning has changed throughout the years.

Chair Seelye opened the public portion of the meeting.

Michelina Serra, 23365 N. Stockton, explained that she lives next to Mrs. Dabish and she is fine with the proposed sunroom.

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

Secretary Stevens confirmed there was an affidavit of mailing on file with 0 returned mailers.

Member Stevens asked if the subdivision was built as part of a PUD or special agreement. Zoning Supervisor Randt responded that it was not, the subdivision was built in the 1950's.

MOTION by Stevens, support by Barringer, in the matter of ZBA Case 9-16-5601, to GRANT the petitioner's request for a 2.7 foot variance to the required 8 foot side yard setback and a 4.65 foot variance to the required total 20 foot side yard setback; because the petitioner did demonstrate that practical difficulties exist in this case, in that:

- The home was built on a lot predating the current zoning standards.
- That the setback, as currently existing from the structure, is not being further reduced, it is going to be maintained.
- It is in conformance with the area based upon other sunrooms that are nearby.
- That the petitioner's plight is due to the unique circumstances of the property.
- That the problem is not self-created, in the sense that the ordinance has been changed since the property was built.

SUBJECT to the condition that the sunroom conforms to the plans provided to the Board.

MOTION CARRIED 7-0.

B. ZBA CASE: 9-16-5602
LOCATION: 29224 W. Eight Mile
PARCEL I.D.: 23-36-355-017
REQUEST: In order to install a freestanding sign in a B-1 zoning district, the following special exceptions are requested: 1. A 1 foot special exception to the 6 foot height limit; 2. A 4.4 square foot special exception to the maximum 32 square foot area limit.
CODE SECTION: 34-5.5.3 B
APPLICANT: Dr. Solomon Pesis, Pesis Dental Group
OWNER: SPJP, Inc., Dr. Solomon Pesis

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos of the existing building and schematics of the proposed sign.

Dr. Solomon Pesis, applicant 29224 W. 8 Mile Road, explained that they have been practicing in the area since 1980 and relocated to this building in 1986 and at that point in time it was zoned B-3; per Mark Stec in 1988 the building changed zoning to B-1 which he does not remembering happening. He pointed out that the majority of the area is B-3 and this small area is B-1, which includes two buildings and a house. He stated that they currently have a sign up in front of the building that is 86 square feet, located between them and the gas station to the left, and their intention is to take that sign down and put a sign in directly front of the building. He stated that the sign will not bother any neighbors behind them as it will be blocked by the building and they are looking to install a 10ML sign where the bulbs are a lot closer so it will be high quality sign that looks very nice. He noted that they have done a lot to fix up the building and have maintained the property which they have received beautification awards for. He explained that the current sign is old and they are looking to upgrade the sign and refurbish the sign on the building.

Dr. Pesis stated that they need the height variance because if they drop the sign down it will be into the snow during the winter and being located on 8 Mile Road, which has high traffic and cars going by quite fast, they do not have much time to catch the attention of drivers.

Jonathan Townsend, 7033 Amanda Drive, explained that they need the variances as they are trying to stay close to what is allowed in a B-1 but by allowing them to move up a little in height and square footage that will get them where they need to be for this particular sign and the sign is still conforming to what is allowed in a B-3 district at 64 square foot and 8 feet in height. He noted that they are trying to beautify the building and make everything look nicer, so they are going with a masonry base for the sign which is better than the aluminum base which can get beat up from mowing and the address will be prominently displayed on the sign along with some metal letters on the base. He stated that the plan is to remove the large non-conforming pole sign and upgrade the building sign with new paint and new face and LED lighting.

Dr. Pesis stated that they plan to be in the building for a long time and they do not intend to change anything else as they just want to maintain and serve the City. He noted that they will work with the City as to what is displayed on the sign as they want to be active citizens in the City.

Chair Seelye noted that the applicant is only asking for 4.4 feet larger and asked if that will make a big difference in the sign.

Mr. Townsend responded that it does somewhat and the reason is because the LED portion of the sign is built in 12x 12 cubes and for them to lose that area it would drop them down a foot and make it a foot narrower causing them to lose quite a bit of square footage.

Member Lindquist asked the applicant to describe the message board plan, how frequently will the sign change, and if it is video board. Mr. Townsend responded that it is not classified as a video board, it is capable of animations and there is a 30 second hold time on the message so it would conform with that requirement. He noted it is full color, capable of still images and it will be setup to run 24 hours, unless it is required to be limited

Mr. Townsend noted that in regards to the square footage, if you look at the electrical sign and the actual letters they do conform to 32 square feet and what pushes them over is the retaining edge, the blue border around the sign which is about 1.5 inches all the way around, and that adds up pretty quick.

Member Lindquist asked if staff counted the retaining edge as part of the square footage of the sign. Zoning Supervisor Randt responded that they calculate it both ways, when the LED is capable of lighting up the whole sign then they review it based upon what is submitted.

Member Lindquist asked if the retaining edge is the unused but lightable space along the edge or the metal boundary on the sign.

Mr. Townsend responded that the black portion of the sign on the drawing, that portion is LED message board, in the blue portion on the top the letters will light and the blue will glow but where there is the 1.5 inch black edge around the blue portion, that part will not light

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

Secretary Stevens confirmed there was an affidavit of mailing on file with 1 returned mailer.

Member Stevens questioned if there was any history on the rezoning of the property in terms of what the intention was and who initiated it. Zoning Supervisor Randt responded that as far as the intent, he cannot answer that and he was unaware what caused the rezoning noting that this specific issue is unusual and it does appear that in the 1980's it was zoned as a B-3.

Dr. Pesis stated that he went back and obtained minutes and there was nothing definitive, it was just brought up in a meeting to rezone to B-1 without reason given and it passed.

Member Rich commented that he is aware of proposed changes to the sign ordinance and in the proposed ordinance when determining the area you measure around the actual words, in this case Pesis Dental Group, so the applicant is stating that if you measure to the edge of the letter themselves then it would be in compliance and he asked if that is a change in the current ordinance.

Zoning Supervisor Randt responded that the height is still an issue and it is different from the current ordinance.

Attorney Morita commented that the proposed changes to the sign ordinance have not yet passed, therefore, the analysis noted by Member Rich was not done by staff and this sign is not subject to it.

Member Stevens stated that based on the site visit the new monument sign is so close to the building you can almost reach out and touch the sign located on the building, as the proposed sign does not appear to more than 15 feet from the building

Dr. Pesis commented that the only way to see the sign on the front of the building is if you look directly at it and on 8 Mile Road with all the traffic you need a sign that is perpendicular to the road to attract attention.

Member Stevens asked if they would be keeping the sign on the building. Dr. Pesis responded that he certainly does not want to pay to take it down as it is cut into the façade of the building but they intend to redo the facing, change to LED lighting and repaint so everything matches and looks nice.

Member Stevens asked if the intent, when refurbishing the sign on the building, is to have it match the materials and look of the proposed sign. Dr. Pesis responded that they will not make it an LED sign but

definitely try to get it to match as far as colors and make it all coordinate. He noted the proposed sign is 10ML and they are spending more to make it look really nice.

Mr. Townsend commented that the 10 ML makes for a higher resolution and clearer image to the drivers as well as extend the life of the sign as this is the next generation of LED signs.

Member Rich asked how the brightness of the sign is measured and if it dims at night. Mr. Townsend responded that the sign does dim at night; there is a photocell sensor on the sign that monitors the ambient light outside so at night it will dim to 25-30%, during the day when the sun is directly on it, it will be full bright and on an overcast day it will run about 50-60%. He noted that the sign continually adjusts based on the ambient light outside.

Member Rich asked if the name on the top of the sign will be internally lit. Mr. Townsend responded that was correct, those lights will be white LED's which are more power efficient and virtually maintenance free and the idea is to illuminate the letters so that they are visible.

Dr. Pesis commented that since this winter the lights on his big pole sign have gone out so that is why he initiated a plan for a new, more modern sign and noted that the pole sign is not justified for this community.

Member Masood stated that he is struggling with meeting the requirements for criteria #2 which states that failure to grant relief would result in more than mere inconvenience or financial expenditures and prevents the building from being used, in this case as a dental office, or preclude the visibility or identification of the property.

Member Vergun noted that these are small exceptions being requested but he is also not sure what to do at the moment.

Member Lindquist stated that in regards to Member Masood's comment, he concludes that not having the sign in the best position for this particular building and not granting the relief would preclude visibility or identification of the non-residential building. He noted that the change in the zoning district seems incongruous in this area, and if it were a B-3 district this proposed sign would be conforming according to the plans and if they took the Pesis Dental Group topper off the sign it would be conforming under the B-1 district.

MOTION by Lindquist, support by Stevens, in the matter of ZBA Case 9-16-5602, to GRANT the petitioner's request for a 1 foot special exception to the 6 foot height limit in a B-1 zoning district and a 4.4 square foot special exception to the maximum 32 square foot area limit in a B-1 zoning district; because the petitioner demonstrated that the requirements for a special exception existed in this case and set forth facts which show that:

1. There are circumstances or features that are exceptional or unique to the subject property and that are not self-created.
2. That failure to grant relief would result in substantially more than mere inconvenience or financial expenditures and would unreasonably preclude the visibility or identification of the non-residential building on the property.

3. That the special exception will not result in a sign or condition that is incompatible with or unreasonably interferes with adjacent or surrounding properties and does substantial justice to both the applicant and adjacent properties, and is not inconsistent with the spirit and intent of this chapter; and
4. When taken on its own, or in combination with other existing conditions on the property, it does not have an adverse effect on the essential character or aesthetics of the establishment or the surrounding area, is not detrimental or negatively affecting the character of surrounding residential development, or compromises the public health, safety or welfare.

SUBJECT to the following conditions:

- The sign shall be in compliance with the plans submitted to the Board
- The removal of the existing pole sign upon completion of the new sign
- The sign's operation be consistent with City policy
- The sign shall be self-dimming, consistent with the representations made at this hearing
- The sign shall not change more than once every 30 seconds
- There shall not be any motion, animation or graphics that move in the sign content
- The brightness of the display, at any time, is limited to .3 foot candles above the ambient light condition as measured 48 feet from the sign
- The changes of the sign and the amplitude of foot candles be granted at this time, subject to the recommendation of staff, unless and until the City adopts or places other requirements that would contradict the limits placed here, in which case the conditions would be amended
- In the event of a malfunction, the sign shall go black as opposed to continuing to display various pixelated images that could act as a distraction
- The display shall not mimic any traffic controls

MOTION CARRIED 6-1 (Masood opposed).

- C. ZBA CASE: 9-16-5603
LOCATION: 29657 Orchard Lake
PARCEL I.D.: 23-03-477-050
REQUEST: In order to build a new credit union with accessory drive-thru service in a B-2 zoning district, the following variances are requested:
1. A 9.3 foot variance to the 75 foot setback from residential districts for the drive-thru;
 2. A 51.8 foot variance to the required 75 feet from Bond Boulevard for the proposed building;
 3. A variance to allow parking within a future Orchard Lake Road right of way;
 4. A 17.5 foot variance to the required 20 foot required setback for dumpster enclosures from residential districts;
 5. A 3 stacking space variance to the six stacking space requirement for drive-thru financial institutions.
- CODE SECTION: 34-3.1.24.E., 34-3.5.2.J, 34-5.1.3.D.iii., 34-5.2.12.L.
APPLICANT: Michigan Schools and Government Credit Union, Steven Brewer, CFO
OWNER: Antonio Barone Revocable Living Trust, c/o Steven J. Wallace, Esq. Wallace & Wallace

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos of the existing building, and a site plan of the proposed building. He noted that the current building is a salon and is proposed to be demolished.

Mike Blaneck, Stucky Vitale Architects 27172 Woodward Ave, explained that the intended plan is to tear down the existing building and put in a new credit union as the property is zoned for that use but one major restraint of the property is that it is only 100 feet wide; therefore, if the 75 foot Bond Blvd setback is applied it would leave a 25 foot strip of land and on the adjacent building there is a drive that is 20 feet wide leaving only 5 feet of property to build on. He noted that the property itself, as it exists, is non-compliant with the current setback requirements and their plan is to minimize and reduce those and make it a much nicer environment for the building by adding more landscaping, improving the quality of that corner with a new modern building. He explained the five requested variances:

1. The proposed building is about 1 foot further than the current building and is 96 feet from the residential property. The landscaping plans shows that the property is well landscaped on the canopy side so when looking from the adjacent property beyond the 6 foot wall you will only see the upper part of the canopy which will look like it is part of the building, minimizing the impact of the drive-thru on the neighborhood in back.
2. As described, if the 75 foot setback from Bond Blvd were imposed it would leave only a 25 foot strip and the adjacent hardware store has a 20 foot lane in which they are maintaining to allow access around the building which then leaves only a 5 foot strip of land to build on.
3. They currently meet the right-of-way requirement on Orchard Lake Road which is 33.5 feet, however, it is potentially going to be increased in the future to 60 feet and the Planning Department recommended to consider this as it is a variance that has been granted on other properties in the past.
4. They need to find spot for the dumpster and if you go down the property all the way to 13 Mile Road, all the dumpsters are in between the parking spaces and the screen wall. He noted they have pushed the dumpster all the way to the corner and it will be 10x10 and since it is a financial institution, their waste is typically paper products and is usually minimal.
5. They have tried to maximize the landscaping on the property as there is currently not a lot of greenspace and in today's modern world, electronic banking is popular so the consensus was that they really do not need the extra stacking with two of lanes of drive-thru and one closest to the building for the ATM and night deposit. He stated that this branch is closed on Sunday, open half a day on Saturday and 9am-5pm during the week and 9am-7pm on Fridays. He added that they could lose the landscaping and increase the width of the drive along Bond Blvd but everyone felt that more landscaping on this site was better for the overall visual impact of the building.

Attorney Morita informed the Board that after discussions with staff it was noticed that one of the items was mis-advertised; when looking at variance request #5 there are actually nine stacking spaces required and her office does not feel that this impacts the Boards decision tonight but she wanted the record to be clear that it is a three space variance request from the nine required, not six.

Chair Seelye commented that on the north side of the property near the drive-thru there is 5.3 feet from the landscaping to the parking and it is required to be 10 feet.

Attorney Morita stated that it is her understanding from staff that the proponent will have to come back for another variance or revise the site plan.

Mr. Blaneck stated that one of the challenges with this property is the purchase agreement that the credit union has with the current land owner which expires on Friday, and when they received the call this afternoon stating there was another variance that they would have to ask for which they were not aware of, they wanted to go ahead and see how this meeting went based on the dynamics of the purchase agreement in place; so whatever happens this evening could impact the decision if the credit union moves forward or not. He noted that if they cannot get the other variance, they feel they could meet the requirement, as they already have the 13 foot lane there now which was approved by the Fire Department and Planning Commission and if they had to carry that lane all the way across to the west they could make it work but they will come back before the Board if need be.

Attorney Morita noted that the Board cannot consider a variance that was not advertised. Mr. Blaneck stated he understands and was aware of that.

Member Vergun questioned, in regards to the parking in the future right-of-way, if they expand the road in 5 years would the property lose parking spaces in that case or just 10 feet of setback. Mr. Blaneck responded that if the future right-of-way goes through they would lose some parking spaces but the site currently has 21 spaces, 15 are required, so if they lose those spaces they will still be in compliance.

Chair Seelye commented that he has issues with the setback for the drive-thru in the back of the property, since there is a residential house there, and there will be cars going thru the drive-thru at night to access the ATM and then possibly making a right onto Bond Blvd causing headlights to be shining on the homes.

Mr. Blaneck noted that there is a 6 foot wall there currently and the direction out of the property would be to go back onto Orchard Lake Road and they would be willing to entertain a right turn only out of the drive-thru if that helps with the Board's concern.

Chair Seelye noted that the dumpster being that close to the residential property is also a big issue and although banks do not have waste that smells, if the variance goes with the land then it is possible a new business will go in there that has waste which rots and smells.

Mr. Blaneck stated that the property is laid out as well as can be to get all the requirements the credit union would need to have for a successful operation, and they have looked around and cannot find another place for the dumpster as nobody wants it facing Orchard Lake Road. He noted that if you look at what is going on as you go down the strip, there are other dumpsters along that area, so they just followed the pattern.

Member Vergun commented that an alternate location would be to take out some of the landscaping and put it in one of the landscape areas.

Member Stevens stated he has a concern with the ATM being adjacent to the building in the first lane as there has been plenty of times where he has been at an ATM and is the third car, so his concern is with the stacking since the third car could block other cars from getting into the drive aisle and prevent them from using the tellers. He questioned if there was any thought on moving the ATM to a different stop or having a walk-up ATM.

Mr. Blaneck responded that their original submittal to the Planning Commission had the correct number of stacking and met the requirement of the ordinance but the Planning Commission felt that more landscaping was better and their opinion was that the amount of stacking needed in today's electronic

world is not as great as in the past. He stated that they can meet that requirement by extending the lane over to get to the required width for the third car.

Member Stevens asked if that would be something they would consider afterwards if they noticed issues relative to the stacking and blocking lanes. Mr. Blaneck responded that it is a member oriented facility and if the members are complaining then they will try to resolve it.

Member Masood commented that one of the factors the Board must consider is that the problem is not self-created and asked for the proponent to address that issue. Mr. Blaneck responded that by looking at the setback requirements for the 75 feet from Bond Blvd, if that were imposed the current building or the proposed building would not work on this site and that would be a huge hardship as it is only 100 feet wide and just over a half acre. He stated that they meet the parking and all fire requirements, they are improving the perspective of that corner with a new building and more landscaping and as there are not many ways to develop this site, this is the best solution. He noted that there was a drive-thru bank originally on this site as they were told by Planning.

Member Lindquist questioned, in respect to the expiration date of the purchase agreement, if the Board were to adjourn and postpone making a determination on all the requests for variances would the applicant extend the purchase agreement for another month and come back to the Board and request the additional variance that will be required in order to put together this development. Steve Brewer, Michigan Schools and Government Credit Unions 40400 Garfield Road, responded that is what they would do, however, the seller would have the opportunity to say they are not going forward or are going to require hard money instead of their current situation which is dependent upon them getting the variances they need.

Mr. Blaneck stated that if this were postponed and the purchase agreement date expires the seller can do whatever they want and since they only found out about the other variance this afternoon they have not had an opportunity to explore what the seller would want to do.

Chair Seelye opened the public portion of the meeting.

Howard Weinberger, 4977 South Bay Drive, explained that he owns the shopping center to the south of this building and he loves the idea as this site has been an eyesore for quite some time but he does have some questions. He asked if the drive-thru was going to be on the Bond Blvd side of the building and are they changing or asking for a variance on the road in between Ace Hardware and the existing building.

Chair Seeley stated there are no requests for variances on south side of the property.

Mr. Weinberger asked if the alley behind the building will be changed. Chair Seeley responded that in the back they are asking for a variance of 7 feet from the building to the property line for the drive-thru.

Mr. Weinberger stated that he has an issue with the drive-thru being on the back of the building as there are trucks that make deliveries back there and come in from 13 Mile Road and exit out onto Bond Blvd, not just delivery trucks but tractor trailers so that drive-thru will block them if it comes out 7 additional feet from the building. He noted that there is a little green space in the back currently and asked if that would go away and if there will be access for fire trucks.

Zoning Supervisor Randt stated that this plan has been reviewed and approved by the Fire Department.

Mr. Weinberger noted that 7 feet from the back of the existing building probably will not take it much further beyond the current green space, so they are not changing traffic flows.

Member Lindquist stated that according to the site plan for the new building, the landscaping in the back of the building does not extend toward the rear property line any further than the back of Mr. Weinberger's building and the parking spaces that are to the rear property line are similarly situated as to Mr. Weinberger's property, so as he recalls the configuration it is not substantially different as far as the width of the drive. He mentioned that he is concerned that there are tractor trailers that go onto Bond Blvd, a dirt road

With that being said, Mr. Weinberger stated he welcomes the proposal and is in support of the Board granting the variances.

Dan Blugerman, listing agent for the property, Tomas Duke Company 37000 Grand River Ave, explained that Mr. Boron, the seller, would not provide additional time for the purchasers, as he has additional people who want to buy the property.

Member Lindquist stated for clarification that the seller would not be inclined to extend the existing purchase agreement. Mr. Blugerman responded that was correct.

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

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

Member Rich questioned the size of the current building. Zoning Supervisor Randt responded that it was 3,300 square feet

Member Rich commented that the new building will be somewhat smaller but it seems that it extends further into the setback toward Bond Blvd.

Mr. Blugerman submitted a mortgage survey to the Board.

Attorney Morita noted that the mortgage survey shows that the existing building is 38 feet from the Bond Blvd right-of-way.

Member Stevens stated that there is a chart on page C-3 in the plans provided to the Board that shows the dimensions.

Member Stevens asked if there is an existing cross access easement or agreement for the drive aisle on the south side as currently there is access to the alley but the proposed plan shows it as a one way. Zoning Supervisor Randt responded that he did not know of any special easement on this site.

Mr. Blugerman stated that he has a title commitment from First American Title Company and there is no easement for circulation on record for the property.

Discussion was held among the Board members and the Attorney as to how the variances should be handled; all as one motion or one by one.

Member Lindquist noted that among the five variances requested the only one that is not really changed by the site plan is the variance to allow parking along the Orchard Lake Road right-of-way, so that one seems to be noncontroversial and he would be inclined to grant a motion specific to variance #3 and then the Board could go into further consideration on the variances required for this site plan noting that this has been given condition approval by the Planning Commission.

MOTION by Lindquist, support by Vergun, in the matter of ZBA Case 9-16-5603, to GRANT the petitioner's request for the following variance: 3) a variance to allow parking within a future Orchard Lake Road right of way; because the petitioner has demonstrated practical difficulties exist in this case, setting forth facts that are consistent with the current configuration of the parking which would be consistent with the site plans utilization of the parking lot, which show that:

1. Compliance with the strict letter of the ordinance unreasonably prevents the petitioner from using the property for a permitted purpose; that is the general business purpose of the building as it sits now, its use as a salon, and its future use as a credit union or any other reasonable business purpose.
2. That granting the variance does substantial justice to the petitioner, in this case being the current property owner, and other property owners in the district in that the adjacent properties appear to have the same permitted use of parking adjacent to Orchard Lake Road that would be within the potential expanded right of way and there is no logical or reasonable alternative seen to bar parking within the Orchard Lake Road right of way among one property when it would be impossible to utilize that as right of way without further accommodations in adjacent properties.
3. That the petitioner's plight is due to the unique circumstances of the property; the specific and current use of the property as well as the potential and proposed use of the property with the other variances.
4. That the problem is not self-created; the problem exists now and has existed so long as the Orchard Lake Road right of way has been platted and parking has been utilized there.

MOTION CARRIED 7-0.

Chair Seeley commented that he still has issues with the drive-thru being so close to the property line.

Discussion was held regarding the variance that was not advertised and the purchase agreement which expires Friday and how that would affect these variances. It was noted that the proponent came this evening to get an idea on how they should move forward with the purchase of the property.

Member Vergun noted that the variance from Bond Blvd would need to be granted on any type of development that came to this site and he is leaning towards granting that variance.

Member Masood asked if the Board can condition granting the variances on building the credit union. Attorney Morita responded that they can condition the variance on them building according to the plans that have been presented.

Member Masood asked if the Board were to grant the variance and the owner sells it to another company, a hospital for instance, would the variances carry over. Attorney Morita responded that the hospital would have to fit into the same building that is being proposed by the credit union.

Member Barringer commented that in regards to variances #1 and #2, if they do not grant them he does not see the project as being doable given the shape of the property. He noted that his biggest issue is with the dumpster position and he believes there is another alternative for the location. He stated that he is ok with the stacking as having used a credit union he has never seen more than two or three cars lined up at a time.

Member Rich commented that there are three drive-thru lanes proposed, and asked if there was a reason for three lanes. Mr. Brewer responded that their current business model shows that they need at least two drive-thru lanes to be successful.

Member Rich stated that if the analysis shows they need two drive-thru lanes and the proposal is for three, if they drop down to two they will eliminate the need for a variance of 9.3 feet from the drive-thru, and with the stacking being an issue as the requirement is three per lane, if there were only two lanes that would allow for four cars to be stacked in the drive-thru at any one time. He asked the applicant if this would be sufficient. Mr. Brewer responded that they have one lane for the ATM and their plan shows the first lane being just for the ATM.

Mr. Blanek stated that lane one is for the ATM and night deposit, there is no active teller in that lane and there are tellers in lanes two and three which would operate during normal business hours. He added that they looked at pushing the building toward Orchard Lake Road which they could do; however, if they impose the future setback on Orchard Lake Road they will not meet the parking requirements. He stated that they have tried to find the best scenario where they could get the building on this site, and have reduced the rear yard issue by about 1 foot. He noted that their original plan called for a row of parking along Bond Blvd which they took out to get the lane there properly along with landscaping built back in and that is why they are a little closer to Bond Blvd.

Mr. Brewer stated that if the Board would prefer to have the stacking in place, it was part of their original plan and they could make it work.

Member Rich asked if there was any opportunity to have teller access in lane one. Mr. Blanek responded that in other branches they have put the ATM further away from the building in an enclosure which is how they do their normal branches, but this site is smaller and the enclosure would be closer to the residents so they moved it inside the building.

Member Rich asked if they could keep the ATM and also have a teller in the first lane. Mr. Brewer responded that there is equipment that can handle that but their members have told them in the past that they did not like that as it is difficult to extend enough to utilize without going too close to the vehicle.

Chair Seeley asked if there was any thought of having the ATM on the south side of the building. Mr. Blanek responded that if you go on the south side you would be in the 20 foot aisle that exists today which they have tried to maintain, so they did not look into that as an option as they thought everyone would want to keep the current configuration of the site.

Member Masood questioned, in regard to variance request #5, the required amount of stacking spaces. Attorney Morita responded that it is a nine stacking space requirement and the proponent is only showing six so they need a three space variance.

Member Stevens noted that if they lost one spot on each side in the front parking lot, they could shift everything 9 feet.

Mr. Blanek stated that by moving closer to Orchard Lake Road they will lose those two spots and have to reconfigure the entrance lane which would cause them to lose the three places next to the lane and by shifting the lane over, they would lose the two spaces adjacent to the lane going west, for a total of seven spaces lost causing them to be deficient in parking spaces and then having to consider the future Orchard Lake Road right-of-way, they would be far off from the parking requirements. He added that the Planning Commission told them to consider what impact the future Orchard Lake Road right-of-way would have on this property.

Member Lindquist asked staff to summarize the status of this site plan approval from the Planning Commission. Attorney Morita responded that it was conditionally approved based on the granting of these five requested variances, noting that it was prior to the need for the sixth variance.

MOTION by Masood, support by Barringer, in the matter of ZBA Case 9-16-5603, to GRANT the petitioner's request for the following variances: 1) a 9.3 foot variance to the 75 foot setback from residential districts for the drive-thru, 2) a 51.8 foot variance to the required 75 feet from Bond Boulevard for the proposed building and 5) a 3 stacking space variance to the six stacking space requirement for drive-thru financial institutions; because the petitioner did demonstrate practical difficulties exist in this case in that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose which is a B-2 zoning district credit union.
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; there is a conditional approval from the Planning Commission and alternatives were discussed and in this specific case they have choose landscaping versus parking spaces.
4. That the problem is not self-created.

SUBJECT to the condition that the building be built as shown in the plans presented with the circulation and configuration as shown in the plans.

Member Stevens asked if there were any protections against a different type of drive-thru in the future or if this district only allows financial institutions. Attorney Morita responded that because it is next to residential area, depending on which zoning district it is in, different uses have different drive-thru restrictions, it is not a blanket approval for everything and it depends on what is in the zoning ordinance at the time the next use comes in. She stated that the approval of any of the variances can be conditioned on the building be built as shown in the plans with the circulation and configuration as shown in the plans which would hopefully limit some of the Boards concerns about other uses coming in that may want to use it differently.

MOTION CARRIED 5-2 (Rich and Seelye opposed).

Member Lindquist suggested that they adjourn variance #4 to allow the proponent to come up with an alternative plan that would then also be approvable by the Planning Commission for a different placement of the dumpster. He noted that it is his feeling that the alternative placement of the dumpster, which he believes would end up being somewhere where the trees are located next to the drive-thru, might not be as appealing as the proposed location and he suspects that the alternative might also not be appealing to the Planning Commission and they would have to go through and review the amended site plan. He stated that if the Board were to deny variance #4 they would have to come up with something approvable by the Planning Commission and by this Board.

Zoning Supervisor Randt stated that he did not think that was a good idea and he suggested the Board vote on the proposed dumpster location this evening as it has already been to the Planning Commission and approved, subject to the granting of the variances, as it is shown.

MOTION by Lindquist, support by Vergun, in the matter of ZBA Case 9-16-5603, to GRANT the petitioner's request for the following variance: 4) a 17.5 foot variance to the required 20 foot required setback for dumpster enclosures from residential districts; because the petitioner has demonstrated that practical difficulties exist in this case as throughout the discussion this evening, in that:

- Granting the variance requested would do substantial justice to the petitioner.
- The petitioner's plight is due to the unique circumstances of the property.
- The problem is not self-created.

Roll Call Vote:

Yeas: Lindquist, Rich and Vergun
Nays: Barringer, Masood, Seelye and Stevens
Absent: None
Abstentions: None

MOTION FAILED 3-4.

Attorney Morita suggested to the Board that since this was a denial and there was necessarily not a completely sufficient record as to the denial, it may be wise for the Board to consider making a motion to deny that specific variance and state on the record why it is being denied.

MOTION by Masood, support by Barringer, in the matter of ZBA Case 9-16-5603, to DENY the petitioner's request for the following variance: 4) a 17.5 foot variance to the required 20 foot required setback for dumpster enclosures from residential districts; because the petitioner did not demonstrate that practical difficulties exist in this case and he did not show that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property; while the petitioner is requesting to use the property as a credit union, the placement of the dumpster so close to residential area has not been shown as a practical difficulty.

Roll Call Vote:

Yeas: Barringer, Masood, Seelye and Stevens
Nays: Lindquist, Rich and Vergun
Absent: None

Abstentions: None

MOTION CARRIED 4-3.

PUBLIC QUESTIONS AND COMMENTS

There were no public comments.

APPROVAL OF AUGUST 9 AND AUGUST 23, 2016 MINUTES

MOTION by Barringer, support by Rich, to approve the Zoning Board of Appeals meeting minutes of August 9, 2016 as submitted.

MOTION CARRIED 7-0.

MOTION by Rich, support by Lindquist, to approve the Zoning Board of Appeals meeting minutes of August 23, 2016 as submitted.

MOTION CARRIED 6-0-1 (Masood abstained).

ADJOURNMENT

MOTION by Vergun, support by Rich, to adjourn the meeting at 9:39p.m.

MOTION CARRIED 7-0.

Respectfully submitted,

James Stevens, Secretary
Zoning Board of Appeals

/ceh