

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
JULY 12, 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 JULY 10, 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 Rich, support by Vergun, to approve the agenda as published.

MOTION CARRIED 7-0

NEW BUSINESS:

A. ZBA CASE: 7-16-5592
LOCATION: 34009 Edmonton
PARCEL I.D.: 23-33-477-041
REQUEST: In order to build a 1,920 square foot, 17 foot high detached garage in an RA-3 zoning district, the following variances are requested: 1. A 670 square foot variance to the required maximum of 1,250 square feet for accessory structures. 2. A 3 foot variance to the 14 foot height limit.
CODE SECTION: 34-5.1.2.D.; 34-5.1.2.C.
APPLICANT: Ronald R. Roscoe
OWNER: Ronald R. Roscoe Trust

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos of the property and original garage, layout and schematic of the proposed 3-car garage.

Ronald Roscoe, applicant, 34009 Edmonton, explained that he was unaware that the original garage, which has deteriorated and has been torn down, was already in excess of what the City allowed and he has used the original garage as long as he could and was forced to put up a shed to store additional items. He stated that he requires the garage because the home does not have a basement and he needs storage space for his cars, motorcycles, riding lawnmower and other maintenance equipment. He noted that the variance, as far as height, will not be any higher than the original garage and it is just slightly larger in size. He stated he has the nicest house on the block in which he plans to stay in and only wants to increase the property value. He added that he abuts a commercial property behind him and has to look at a 40 foot high building so he does not see that his garage will present a problem; it will be an improvement.

Chair Seelye asked if the shed on the right side of the property will remain if the proposed garage is built. Mr. Roscoe responded that it will be removed.

Chair Seelye indicated that in order for a variance to be granted certain criteria must be met, including unique circumstance of the property and that the problem is not self-created and asked the applicant to address these items. Mr. Roscoe responded that his property is unique as it is a large property on a dirt road in the middle of the City which requires more maintenance so he needs lawn equipment and other items to maintain and make use of his property. He stated that he does not feel it is self-created as there was an oversized garage already on the property which was grandfathered in and he had already started to tear it down when the City informed him so he tried to correct it by coming to get the necessary permits.

Chair Seeley asked if the proposed garage will be the same size as the original garage. Mr. Roscoe responded that it will be slightly larger in order for him to park his vehicles and motorcycles in it.

Chair Seeley questioned if there will be utilities in the garage. Mr. Roscoe responded that there will be eventually but not heat.

Member Rich questioned the height of the proposed garage and why it was necessary. Mr. Roscoe responded that the height is for proper runoff as there must be good pitch in order for snow to leave the roof. He added that the City should require more pitch to allow for proper runoff to prevent roofs from rotting.

Member Lindquist asked if the pitch issue, the request for additional height, could be resolved if the proposed garage were built within the ordinance. Mr. Roscoe responded that he was not sure but it needs a good pitch for runoff and the original garage was already in excess of what is allowed.

Member Lindquist stated that this is not an issue of pitch, it is an issue of the size and height of the proposed garage, as the same pitch ratio is possible on a smaller garage which does not require variances.

Mr. Roscoe commented that he would not be obstructing anyone's view and the garage does not present a problem with anyone in the area.

Member Lindquist asked if the applicant could get by with a 1,250 square foot garage. Mr. Roscoe responded no, as he has cars and motorcycles and wants to park his everyday vehicle in the garage as well.

Member Rich asked where all the vehicles and equipment are stored currently. Mr. Roscoe responded that he has items stored at his in-laws garage and at two other places.

Member Masood questioned the square footage of the existing structure. Mr. Roscoe responded that he tore the original structure down so he is not sure, however, the aerial map shows the proposed outline and the original outline, and you can see it is not much larger.

Member Masood asked if there were any other variances on the property. Zoning Supervisor Randt responded there was not.

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 21 returned mailers.

MOTION by Rich, support by Barringer, in the matter of ZBA Case 7-16-5592, to DENY the petitioner's request for a 670 square foot variance to the required maximum of 1,250 square feet for accessory structures and a 3 foot variance to the 14 foot height limit; because the petitioner did not demonstrate practical difficulties exist in this case, specifically:

1. The petitioner's plight is not due to the unique circumstances of the property. The petitioner indicated he does have a large property and may need equipment for lawn maintenance and other items to maintain the property, however, classic cars, motorcycles, and other vehicles were mentioned and none of those have to do with the unique circumstance of the property.
2. The problem needs to be not self-created; while there was an existing garage that may have been a permitted non-conforming structure, the items that the applicant wants to store in the garage are things that he has elected to keep and though inconvenient, there are other places to store those items rather than onsite.

MOTION CARRIED 6-1 (Stevens).

B. ZBA CASE: 7-16-5593
LOCATION: 28990 Orchard Lake Road
PARCEL I.D.: 23-11-101-034
REQUEST: In order to permit outdoor seating along the west side of an existing restaurant in a B-4 zoning district, a 18.5 foot variance from the requirement that such outdoor space shall not be located within 200 ft. of a residential district.
CODE SECTION: 34-4.32.1
APPLICANT: Tony Flores
OWNER: Michael Gluck Trust

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos and schematics of the property, the renovations and a sketch showing the proposed outdoor seating area.

Harold Remlinger, Project Architect, 975 East Maple, explained that the property is located in a B-4 district that allows restaurant use as well as outdoor seating. The property is approximately 294 feet in depth, as well as many others on the same block on Orchard Lake Road and the current setback requirement is 120 feet for these properties, which only allows them 174 feet away from the residential area, therefore, they feel this is a non-self-created request for variance considering this is a permitted use in the area. He stated that the Planning Commission has granted approval on the site improvements

including the building and outdoor seating area with the contingency that they receive a variance for a dimensional setback. He noted that this is a unique circumstance considering that the lot is 294 feet and with the required front yard setback they cannot meet the requirements of the ordinance in any way. He stated that they have tried to minimize the dimensional variance by pushing the outdoor seating away from the building by 7 feet allowing for a safe walkway for pedestrians between the building and fenced in outdoor seating area and they also created additional walkways on the side of the seating area which is protected by curbs, increasing the safety of the public onsite.

Mr. Remlinger explained that allowing the variance will not alter the character of the area considering that there are other restaurants along this stretch of Orchard Lake Road within the same block that have been before the Board and received a variance for the same use. He stated that they appreciate the Board's consideration of a variance of 24 feet to allow the seating area and noted that the area is shielded by the restaurant from the residential areas along with a 6 foot masonry wall at the back as well as trees along the fence line.

Chair Seelye questioned the number of proposed seats in the outdoor area. Mr. Remlinger responded that there will be at most 62 occupants.

Chair Seeley asked if customers will be able to enter the seating area from outside or only through the restaurant. Mr. Remlinger responded that the area is completely fenced in so they would have to come into the restaurant to be seated by the hostess.

Chair Seelye asked if the restaurant had a liquor license. Mr. Remlinger responded that they do have a liquor license.

Member Masood questioned if there were any plans for music or a microphone in the outside area. Tony Flores, restaurant owner, 28990 Orchard Lake Road, responded that they will have some kind of entertainment to create a nice atmosphere but there will not be live music, just some speakers in the area.

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

Member Lindquist commented that, with respect to entertainment, it is outside of the request before them this evening and would be handled by various City departments and asked if that is something the Board should take into consideration. Attorney Morita responded that the applicant is not asking for permission for entertainment and as a condition of granting the variance, the Board can include reasonable restrictions such as, no live music outside, decibel levels so it is not heard by the residents, or no outside music.

Secretary Stevens confirmed there was an affidavit of mailing on file with 25 returned mailers.

Member Stevens asked if there was a standard in the ordinance with regards to noise at property lines that the Board could reference. Zoning Supervisor Randt responded that there is but it is handled by the Police Department.

MOTION by Masood, support by Vergun, in the matter of ZBA Case 7-16-5593, to GRANT the petitioner's request for a 18.5 foot variance from the requirement that such outdoor space shall not be located within 200 ft. of a residential district; because the petitioner did demonstrate practical difficulties exist in this case given facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property, which is a restaurant and it is within character as other restaurants in the area have outdoor seating.
2. That granting the variances requested would do substantial justice to the property owners or others in the district.
3. The petitioner's plight is due to the unique circumstances of the property.
4. The problem is not self-created.

SUBJECT to the following conditions:

- No outside music or entertainment be permitted

Discussion was held regarding the allowance of music in the outdoor seating area due to the seating area's location to Orchard Lake Road and the residential area, and the fact that the Police Department is responsible for enforcing if there is an issue with the noise.

Attorney Morita indicated that there is already a standard in the Zoning Ordinance, Section 34-3.25 which requires any property owner to comply with the City's noise and glare requirements as stated in Chapter 17 of Article 7, therefore, this property owner is already required to comply regardless of what conditions the Board puts on the variance, however, the Board may set time limits for outdoor music.

Member Masood indicated that he would like to remove the condition of no outside music or entertainment be permitted.

Member Vergun noted that he agreed with the amendment to the motion to remove the condition.

MOTION by Masood, support by Vergun, in the matter of ZBA Case 7-16-5593, to GRANT the petitioner's request for a 18.5 foot variance from the requirement that such outdoor space shall not be located within 200 ft. of a residential district; because the petitioner did demonstrate practical difficulties exist in this case that show forth facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property, which is a restaurant and it is within character as other restaurants in the area have outdoor seating.
2. That granting the variances requested would do substantial justice to the property owners or others in the district.
3. The petitioner's plight is due to the unique circumstances of the property.
4. The problem is not self-created.

SUBJECT to the following conditions:

- Music may be played in the outdoor seating area between the hours of 8am and 10pm
- The size and location of the proposed outdoor seating area must be as shown in the application

MOTION CARRIED 7-0.

C. ZBA CASE: 7-16-5594
 LOCATION: 20826 Sunnydale
 PARCEL I.D.: 23-34-476-056
 REQUEST: In order to retain an existing 768 square foot detached accessory structure in a RA-3 zoning district, a 583 square foot variance is required.
 CODE SECTION: 34-5.1.2.D.; 34-5.1.2.A.
 APPLICANT: Daniel I. Weberman, Attorney at Law
 OWNER: John Ott

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos of the property and structure, and schematics of the structure. He explained that the applicant has an existing garage on the property and when the accessory structure was constructed, it exceeded the accessory square footage allowed. He noted that this issue came to the Zoning Department by a complaint from the Building Department, and it had went to the Planning Department where it was determined that it exceeded the allowable square footage for an accessory structure.

Dan Weberman, attorney representing the property owner, 7071 Orchard Lake Road, explained that this lot is the largest in the neighborhood at 250 feet deep and 100 feet wide and it is in a unique area where there are many other houses that have large garages, outbuilding or sheds. He stated that the house has been there for about 50 years and Mr. Ott is one of the oldest people in the neighborhood and he is asking to be able to maintain this accessory structure for several reasons; he is elderly, he needs space to store his lawn equipment and other items to maintain his property and the garage is used as a workshop as the house is small. He noted that due to Mr. Ott's age he is unable to use non-powered equipment, he is on social security and cannot afford to hire landscapers, he uses a wood burning stove for heat in the winter and has a log splitter and needs to maintain those items as well. He stated that Mr. Ott proceeded to build this structure before he had the variance and he is now asking to maintain the structure which is aesthetically pleasing, well-constructed and conducive to the neighborhood.

Mr. Weberman explained that in terms of being self-created, Mr. Ott is getting older and needs a place to store his property maintenance equipment along with his vehicle. He added that the structure improves the neighborhood in terms of tax assessment as the Assessor has been out and increased his assessment.

Chair Seelye asked if Mr. Ott received a building permit. Mr. Weberman responded that he did not; he tried to but needed the variance before the building permit.

Chair Seelye questioned the size of the existing garage on the property. John Ott, property owner, 20826 Sunnydale, responded that it was 24 feet by 24 feet.

Chair Seeley asked if Mr. Ott was in the firewood business. Mr. Ott responded that he is on medical retirement and he only heats his house with firewood, there are no sales.

Chair Seelye questioned the large trailer on the property. Mr. Ott responded that it is used to transport a race car he built for his son.

Member Vergun commented that on his site visit he noticed wood stacked up on the front porch and asked if that was going to stay there. Mr. Ott responded that he was going to keep it there as it is easy access for him and he has a letter from the City that states that storage of firewood on the front porch is permitted.

Member Masood stated, for clarification, that the applicant had applied for a building permit, the permit was denied but he built the structure anyway and asked Mr. Ott if this information was correct. Mr. Ott responded that it was correct.

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 2 returned mailers.

MOTION by Masood in the matter of ZBA Case 7-16-5594, to DENY the petitioner's request for a 583 square foot variance; because the petitioner did not demonstrate practical difficulties exist in this case or set forth facts that show that the problem is not self-created.

While there are four items of criteria, all four items must be met and he cannot get around that the problem is not self-created.

The motion failed due to lack of support.

Member Rich commented that the Board has situations where applicants come before them indicating better to ask for forgiveness than permission, and in this case, based on what the Board has heard, permission was asked and denied so it is not forgiveness for not knowing, it is a direct violation of the Building Department's decision. He stated he is concerned with what is being stored in the structure as not all of the items relate to the needs of the property; there is a car being rebuilt and a push mower and these items do not comply with the need to maintain this particular property, therefore he feels a smaller structure would have been appropriate, and as it stands, the items causing the need for the structure are self-created.

Member Vergun commented that he took the applicant's testimony to be making a claim of ignorance but that is not a reason to grant a variance.

Member Lindquist stated that he is inclined to vote against granting the variance exclusively on the firewood issue as the applicant stated he will continue to store firewood on the front porch, therefore, the shed space is not needed for that purpose and the remaining stated needs for the structure do not balance out.

After further discussion, it was determined that the original motion could stand, therefore, Member Masood renewed his previous motion.

MOTION by Masood, support by Rich, in the matter of ZBA Case 7-16-5594, to DENY the petitioner's request for a 583 square foot variance; because the petitioner did not demonstrate practical difficulties exist in this case or set forth facts that show that the problem is not self-created.

MOTION CARRIED 7-0.

D. ZBA CASE: 7-16-5595

LOCATION: 24281 Orchard Lake Road
PARCEL I.D.: 23-22-476-043
REQUEST: The following variance is requested in order to construct a drive-in restaurant in a B-3 zoning district. 1. A use variance to allow a drive-in restaurant that abuts an RA district.
CODE SECTION: 34-4.35.1.C.; 34-4.32.1
APPLICANT: Michael Jwaida/Jwaida Oraha Group
OWNER: Jwaida Oraha Group, L.L.C.

Utilizing overhead slides, Zoning Supervisor Randt described the location of the property, showed an overhead view of the property, photos of the property and schematics of the proposed restaurant and drive-thru. He noted that the applicant wishes to construct a Tim Hortons Café and Bake Shop and the proposed building is adjacent to residential zoning districts and in order to have a drive-thru restaurant a use variance is required.

Ghassan Abdelnour, GAV Associates Architect, 24001 Orchard Lake Road, representing the owners of the property, explained that they are proposing to build a 2,500 square foot Tim Hortons at this location and they have met with the Planning Commission and they meet the requirements of parking and circulation and fire codes and the only issue is that they are in a B-3 zoning district that abuts a residential property, therefore, they are not allowed to have a drive- thru without receiving a variance.

Mr. Abdelnour stated that the owners have owned the property for 15 years and both have businesses in the City; Mr. Jwaida owns 3 Tim Hortons and Mr. Oraha owns the Farmington Hills Manor and they both live in the City. He explained that they have been trying to do something with this property and every time they get a developer interested in buying or leasing the issue of having a drive-thru comes up, therefore, this is not self-created as the property has been vacant for years and they have tried to develop it but it never worked because of the use restriction. He noted that Tim Hortons business is 70% drive thru, so that is very important to a business of this type and many coffee shops that open without a drive-thru end up closing.

He stated that Orchard Lake Road is very busy so this business will not change the character of the neighborhood and years ago a study was done at this intersection that indicated that they needed more businesses and restaurants in this area to make it more vibrant. He noted that they have talked to the homeowners in the neighborhood and have 9 letters from them in support and they have talked to the businesses as well and they are in support of this project as it will bring more business to the area.

Raphala Oraha, 2933 Weathervane Ave, property owner, stated that he owns the Farmington Hills Manor and the Liquor Store next to the proposed restaurant and explained that this property has been vacant for 44 years; the original owner tried for 32 years to develop the lot and when he bought the business and property he was hoping to do something with it. He stated that he already brings a lot of business to Farmington Hills and rather than leave this property vacant for another 15 years a Tim Hortons would be a nice restaurant to have in the area and it will bring 10-15 new jobs to the City.

Chair Seelye asked if there is a retaining wall in the back of the property. Mr. Abdelnour responded that the Planning Commission requested that they install landscaping or a 6 foot wall and the owners are willing to do both. He added that the timing of the drive-thru will be limited to 4am-11pm and the owner will work to make sure the drive-thru is working properly.

Mike Jwaida, 1015 Joanne Ct, property owner, explained that he has been a Tim Hortons franchisee since 2008 and is the owner of the 8 Mile and Farmington Road, 12 Mile and Farmington Road and Grand River and 10 Mile Road locations and is willing to open another store at this location. He stated that at the Planning Commission meeting they questioned the sound but the sound system company came up

with a system that will reduce the sound of the speaker and because he closes at 11pm there should not be any bother to the neighborhood. He added that the neighbors are welcoming of this proposal as it is a nice and clean place to work and serve.

Chair Seeley asked if only the drive-thru opens at 4am. Mr. Jwaida responded that was correct and from 4am to 5am they do not get much business but they open that early to prepare the store and the inside opens at 6am.

Chair Seeley asked if there is a need for a retaining wall in the back of the property. Zoning Supervisor Randt responded that the wall is something that will be discussed at the Planning Commission meeting.

Member Lindquist asked if the Tim Hortons regional headquarters was located at 10 Mile and Grand River. Mr. Jwaida responded that the office is vacant because Tim Hortons was bought by another company and canceled their plans to locate the headquarters there.

Member Lindquist questioned the extension of the parking lot and if it went behind the buildings all the way to 10 Mile Road. Mr. Abdelnour responded that there was an egress to 10 Mile Road but most customers will come from Orchard Lake Road to access the drive-thru.

Member Lindquist commented that there is a potential for adding traffic to 10 Mile along with the alley behind the buildings.

Mr. Jwaida commented that if customers come through from 10 Mile they have to go all the way around the building to get to the drive-thru.

Mr. Abdelnour commented that they are proposing an easement to open up the driveway to the office building to the north and they are closing one entrance in front of the liquor store and moving it north of the property.

Member Barringer questioned the letter to Mr. Randt from Mr. Stec, which was included in the packet, that stated that the Planning Commission denied the request for this project based on several criteria and asked if the Board were to grant this variance, would they then have to go back to the Planning Commission. Zoning Supervisor Randt responded that the applicant does have to go back to the Planning Commission.

Mr. Abdelnour commented that there were five items the Planning Commission called out and they have resolved those items and sent them back to the Planning Department, the only item left is the use variance.

Attorney Morita clarified that the applicant would have to go back before the Planning Commission to deal with the previous issues.

Member Masood asked if the Board were to deny this variance, would the applicant proceed with just the restaurant or scrap the entire project. Mr. Jwaida responded that 70% of their business is drive-thru and there are no Tim Hortons in Michigan without one.

Member Stevens asked if there were other avenues discussed through this process to allow such a use besides coming before the Board for a use variance.

Attorney Morita commented that as part of any use variance request, the applicant is required to have a pre-meeting with staff and there were two meetings on this case prior to coming before the Board. She stated that other things were discussed and there were originally two use variances proposed, one for this

property and one for another and the other has been withdrawn. She noted that as part of the process, the other options, the other principle permitted uses in the district and what the elements are for meeting the standards in order get a use variance are explained to the applicant and it is discussed that they will have to explain to the Board as to why the property cannot be used for a permitted purpose.

Member Lindquist asked, with respect to the Planning Commission denial, if the Board action would be conditional on the Planning Commission approval as the Board occasionally has items that come from the Planning Commission that have been conditionally approved pending the Boards approval. Attorney Morita responded that she understands the theory on that however, the reason the Planning Commission determined they could not approve this case is because it needed a use variance and they were not going to consider it without that variance. She stated that in this case it does not help the Planning Commission to condition the granting of the use variance on something the Planning Commission may or may not do.

Member Lindquist asked if the Board were to approve the variance and the Planning Commission does not approve the site, would the use variance go away.

Attorney Morita responded that it would have to depend on the conditions that the Board puts on the property, keeping in mind that the variance is not tied to the occupant, it is tied to the property itself, therefore, Tim Hortons could go away tomorrow and if McDonalds wanted to move in under the same site plan and everything else, it would be difficult to stop them. She stated the Board must look at the elements needed for the unnecessary hardship, as it is a higher standard that requires a vote of 5 members and when going through the elements they should not get tied up on what the Planning Commission may or may not do, and if the Board is inclined to grant the variance they must think about what conditions to put on the variance knowing that Tim Hortons may go away and the use variance will stay with the property.

Member Stevens asked if the Board could condition the variance with regard to the use itself to Tim Hortons, the specific use as proposed, so that if another use that is more intense such as one with a fryer or grill or similar restaurant equipment would not be allowed. Attorney Morita responded that type of condition would be hard for staff to enforce as staff would have to go in and check on the type of equipment being used and some of the equipment stated is used in a bakery. Mr. Abdelnour mentioned that the Planning Commission gave them hope on getting the use variance.

Chair Seelye stated that they want to give them hope as well, since having a property sit idle for 40 plus years does not do anybody any good.

Chair Seelye opened the public portion of the meeting.

Tom Cianciolo 31841 Dohany, explained that he is a chair person on the Restrictions Committee for Farmington Hills Subdivision which backs up to the proposed restaurant and he went around and had the homeowners sign the letters in support. He noted that most everyone is in agreement for it and only 2 people have concerns; one with the lighting and the other with the exit or entrance from 10 Mile Road as they would like everything on Orchard Lake Road.

Member Lindquist asked if Mr. Cianciolo was speaking on behalf of the Homeowners Association and has been authorized to speak in support of the variance. Mr. Cianciolo responded that he did not go through the association, that he took it upon himself to come to the meeting to show support.

Mr. Abdelnour commented that they have submitted lighting as part of their site plan and they are not supposed to have any lighting going through the property and they will install landscaping or build a wall to block the headlights from the homes. He stated that the City will require them to shield the pole lights and they plan follow City Code.

Mr. Abdelnour noted that the 10 Mile Road entrance is mostly for the liquor store and dry cleaners and he does not count on people coming from 10 Mile Road to Tim Hortons as there will not be a sign.

Member Lindquist questioned the location of the loading area. Mr. Abdelnour responded that it is located between the drive-thru and the backside of the building and they only have deliveries twice a week, early in the morning when there is not much traffic.

Member Lindquist asked if the delivery trucks will be required to use the Orchard Lake Road entrance and exit. Mr. Abdelnour responded that they will be required and that entrance is easier for them.

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

Secretary Stevens confirmed there was an affidavit of mailing on file with 6 returned mailers.

Member Rich commented that Tim Hortons is a great place however, there is one factor required for unnecessary hardship and he cannot see that the petitioner's property cannot be used for the purposes permitted in this zoning district. He explained that the applicant has identified that for the last 15 years they have tried to put a restaurant in this location but principle permitted uses of the property include many other types of businesses such as retail business, personal service establishments, laundry, dry cleaning, office building, medical offices, banks, credit unions, post offices, nursery schools, car sales, etc. and he just does not see how not one of these other uses could utilize this property. He stated that he understands the desire to have a coffee shop in this area but because this is the standard that is necessary for determining unnecessary hardship, he cannot grant this request for a variance.

MOTION by Rich, support by Lindquist, in the matter of ZBA Case 7-16-5595, to DENY the petitioner's request for a use variance to allow a drive-in restaurant that abuts an RA district; because the petitioner did not demonstrate unnecessary hardships exists in this case.

Member Stevens stated that he agrees with the motion and feels that this is a situation where the process is not appropriate, as he does not think they can reasonably look at the requirements for how to grant a use variance and apply them in this instance, and as much as he thinks that a Tim Hortons may fit here, there are many other things that could work that are within the ordinance. He stated that he feels there are other appropriate processes to achieve the same end goal that could be pursued, which would not require a use variance, which should only be used in very rare and unique circumstances where there are no other alternatives. He added that he hopes that the applicant will pursue other avenues to accomplish the same end goal which may make sense at this location.

Member Masood commented that he respectfully disagrees as the applicant has tried other avenues and the property has sat vacant for 40 plus years and if there was something else it would have been there already.

Member Rich commented that personally he thinks Tim Hortons would be wonderful to have there but because of the specific language in the ordinance that is the reason why he moves to deny. He explained that the problem he has is there are too many other factors that they do not know, such as with a list of 20 plus potential uses and the specific factors for each of those types of businesses, why have potential developers elected to not go in this location. He added that he believes there must be some other permitted use, with the right price and design that could operate at this property.

Member Stevens stated that there is a specific requirement in the ordinance that does not allow drive-thru restaurants next to an R-A district, so in order to get around that rule there are other measures that can be taken, such as amending the ordinance instead of granting a use variance.

Member Masood stated that he understands that but they are here today to deliberate Tim Hortons not other uses, and he questioned if a restaurant is permitted in a B-3 district. Attorney Morita responded that they are permitted.

Member Lindquist commented that his concern is more procedural and in most cases they consider, residents do not choose to come and make their opinions known, but in this unique circumstance the Board has been presented with a number of letters in support of the Tim Hortons. He stated that they have also been presented with qualifications put forth by a member of the association from those residents who are not present and are most affected in the neighborhood and he does not think their concerns have been adequately addressed.

Member Rich noted that there are 4 standards that must be met and in regards to the second standard, the petitioner's plight is due to the unique circumstances particular to this property, the situation in this case is that the plight would apply to every single property in the City in a B-3 district that abuts a residential district, so there is certainly nothing unique about this situation that does not also apply to every other B-3 district location that abuts residential.

Member Masood commented that a mailing was sent out and in his view, if there was anyone strongly opposed to this use variance they would be here today and be vocal in their opposition.

MOTION CARRIED 5-2 (Masood, Vergun).

APPROVAL OF JUNE 14, 2016 MINUTES

MOTION by Rich, support by Stevens, to approve the Zoning Board of Appeals meeting minutes of June 14, 2016 as submitted.

MOTION CARRIED 7-0

PUBLIC QUESTIONS AND COMMENTS

There were no public comments.

Member Stevens asked if there is any consideration or has any one looked at the accessory structure ordinance in terms of square footage, as currently, if someone has a 10,000 square foot lot or a 50,000 square foot lot there is no difference and he thinks that there should be a consideration given to the size of the lot.

Zoning Supervisor Randt commented that they allow 50% of the house or 1,250 square feet and that is a large accessory structure.

Attorney Morita commented that she will bring that issue up in her next staff meeting.

ADJOURNMENT

MOTION by Vergun, support by Masood, to adjourn the meeting at 9:26p.m.

MOTION CARRIED 7-0.

Respectfully submitted,

James Stevens, Secretary
Zoning Board of Appeals

/ceh