

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
JANUARY 14, 2014**

CALL MEETING TO ORDER:

Chair White called the meeting to order at 7:35 p.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, Rich, Stevens, Vergun and White

Members Absent: Paramesh and Seelye

Others Present: Attorney Morita and Zoning Division Supervisor Randt

APPROVAL OF AGENDA

Chair White asked that the proponent for Item D, ZBA Case 1-14-5507, come to the podium. Attorney Morita explained that it was discovered that the variance being requested was not as advertised and since the Board may not grant more relief than what has been advertised, the proponent may wish to have the item adjourned to a date certain in February. She further explained that there may be a need to re-advertise this item under a new Case number once the proponent clarifies his required variance and request with the appropriate departments.

Chair White asked the proponent if he wished to have his item adjourned to a date certain in February. Brent Robbins, Applicant for ZBA Case 1-14-5507, confirmed that he would like the case adjourned to a date in February.

Attorney Morita suggested moving this item up on the agenda as the first item for the Board to consider adjournment.

MOTION by Lindquist, support by Stevens, to approve the agenda as amended, moving Item D, ZBA Case 1-14-5507, as the first item to be considered.

MOTION CARRIED UNANIMOUSLY, 6-0.

NEW BUSINESS:

D. ZBA CASE: 1-14-5507

LOCATION: 29000 Nine Mile Road

PARCEL I.D.: 23-25-352-013 ZONE: RA-1

REQUEST: In order to build a 480 square foot addition to an existing 480 square foot detached garage, the following variances are requested: 1. A 5 foot variance to the required 10 foot side yard setback requirement. 2. A 210 square foot variance to the total permitted 750 square feet allowed for accessory structures.

CODE SECTION: 34-5.1.2.A; 34-5.1.2.D

APPLICANT/OWNER: Brent Robbins

MOTION by Stevens, support by Lindquist, to adjourn consideration of ZBA Case 1-14-5507 to the Zoning Board of Appeals meeting of February 11, 2014.

MOTION CARRIED UNANIMOUSLY, 6-0.

Chair White announced that the Zoning Board of Appeals was short one member this evening and explained to all applicants present that approval of any item would require 4 affirmative votes of the 6 members present. He inquired if all applicants still wished to have their cases heard this evening.

All applicants confirmed that they would like to have their cases heard this evening.

OLD BUSINESS:

A. ZBA CASE: 10-13-5495

LOCATION: 24420 Indoplex

PARCEL I.D.: 23-21-303-026 ZONE: LI-1

REQUEST: In order to permit the outside storage of materials within the side yard, the following variance is requested: A variance from the requirement that outside storage of materials must be stored in the rear yard only.

CODE SECTION: 34-3.14.2

APPLICANT: Joel Ticula for Cutting Edge Granite, Inc.

OWNER: American Computer Exchange

Zoning Supervisor Randt discussed the location of the property and presented various photos of the business and items currently being stored on site in the side yard. He noted that the ordinance only allows for rear yard storage.

Joel Ticula, applicant, stated that he is the owner of Cutting Edge Granite at this location and has been at this same location for the past 10 years. He stated that he is requesting the variance in order to continue to store materials in the side yard as he shares the building with other businesses and has no room inside the building to store the material. He explained that he needs to have material in stock for customers to view samples and mentioned that the materials have been in the same location in the yard for the past 10 years. Mr. Ticula stated that he intends to install a fence with a rolling gate to secure the area. He feels that in order to continue to do business, the variance is needed so that he can store remnants to keep in stock for customers.

Mr. Randt added that if the Board determines to approve the variance, any proposed fencing should be reviewed by the Planning Department as to materials used.

Attorney Morita clarified that there is no variance required by the ZBA for the fence; however, it would be fair to condition any approval this evening upon review by the Planning Department for any proposed fencing on the site.

Member Stevens asked for clarification on the location of the storage area. Mr. Ticula responded that the proposed gate and fence would be located where the overhead door now exists with storage placed further back where it is currently shown in the photos presented to the Board. He distributed a picture of the proposed location of the fence to the Board.

Member Barringer confirmed that Mr. Ticula has been at this location for almost 10 years and has always stored his material in the side yard location. He questioned if extra storage is now needed due to the

growth of the business. Mr. Ticula responded that if they can maintain the storage area they currently have, that is sufficient for them to continue to do business.

Discussion was held on required screening of the material. Mr. Ticula responded that they need to inquire about the type of fencing that is required, but intend to screen the material from the residents.

Mr. Lindquist mentioned that if the lot to the east of Mr. Ticula's business is ever developed, he may also need to screen the material from view by that property. Mr. Ticula stated that he would comply with that if required. In answer to Mr. Lindquist, he also indicated that only materials for the business would be stored in the side yard and there would be no vehicles parked in this area.

Chair White inquired about the hours of operation. Mr. Ticula responded that his business is open 8am-5pm Monday through Friday and 10am-2pm on Saturday, with no extension of hours during the summer months.

Chair White opened the public portion of the meeting.

Andre Ticula, applicant's son, commented that his family runs a good business and provides for good customer service, and they strive for safety. He noted that they currently have signs on the property that people should not be on site after hours, but feels that a fence would certainly help to secure the area. He reiterated that his father is only requesting to keep the existing storage area. Mr. Ticula stated that keeping the storage is crucial to the success of their business and they wish to remain in Farmington Hills. He feels that good customer service and running an honest business has helped their business survive the hard economic times.

Member Lindquist asked about truck parking beyond the fenced area or if anyone else's materials would be stored on site. Andre Ticula responded that there would be no vehicles parked beyond the fence; they have one vehicle inside the building and one vehicle parked in the loading dock area as well as one hi-lo on site. He stated that they would only be storing their own materials.

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

Secretary Vergun confirmed there was an affidavit of mailing on file with no returned envelopes.

MOTION by Rich, support by Stevens, in the matter of ZBA Case 10-13-5495, that the petitioner's request for a non-use variance, from the requirement that outside storage of materials must be stored in the rear yard only in order to permit the outside storage of materials within the side yard, is **GRANTED** as the petitioner did demonstrate practical difficulties exist based on the following:

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.
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 unique circumstances of the property in that the topography in the back yard is not conducive to allowing for storage of the material in the far back yard and needs to be stored where it currently located, which would require appropriate screening.

4. The problem is not self-created as it is the nature of the business to have such materials stored on site.

SUBJECT to the following conditions: 1) that the applicant shall work with the Building and Planning Departments with regard to the type of materials to be used for the screening fence to make sure that it complies with ordinance requirements; 2) that should an occupant take possession of the property immediately to the east of the building, the applicant will install a screening fence to shield view of the materials to that property owner or occupant; and 3) to allow for only the storage of materials that are for sale at the applicant's business and not for the storage of any other materials.

Member Stevens commented that he felt storing the materials in the side yard, which was further from the adjacent residential area than the rear yard, was a benefit.

MOTION CARRIED 5-1 (Barringer opposed).

B. ZBA CASE: 12-13-5505

LOCATION: 29206 Orchard Lake Road

PARCEL I.D.: 23-11-101-041 ZONE: B-4

REQUEST: In order to construct outdoor seating (patio) for a restaurant, the following variances are requested: 1. A 35 foot variance from the requirement that outdoor seating shall not be located within 200 feet of a residential district. The proposed patio is 165 feet from a residential district. 2. A 5 parking space variance is requested to the required total 57 spaces, an additional 5 spaces because of the outdoor seating parking requirement. There are currently 52 parking spaces.

CODE SECTION: 34-4.32.1, 34-4.32.5, 34-5.2.13.C.xviii

APPLICANT: Brent Skaggs of Freakin' Unbelievable Burgers

OWNER: Spartan Pastabilities, L.L.C.

Zoning Supervisor Randt discussed the location of the property that is located within a B-4, Business District. He presented an overview of the property, photos of the business and a site plan of the proposed patio. He explained the variances requested indicating that the variance for parking would be required due to the proposed outdoor seating.

Brent Skaggs, applicant, stated that the business is proposing to build an outdoor patio on the west side of the building, opposite of the residential area. He noted that the parking variance would only be required during a portion of the year when the outdoor seating would be in use. He commented that the 35 foot variance is required due to the proximity to the residential area; however, there are existing businesses in the area that also have outdoor seating within 200 feet of a residential district. He feels that any noise would be blocked by the building. Mr. Skaggs commented that patios are a growing trend in the restaurant business and feels that it is needed in the summer months to help generate business.

Chair White questioned the hours of operation. Mr. Skaggs responded that the business is open 10:30am-10pm Monday-Thursday and Sunday and 10:30am-11pm on Friday and Saturday.

Member Vergun inquired if this was a chain restaurant. Mr. Skaggs stated that they have one other restaurant in Flint, Michigan. He mentioned that the Farmington Hills location opened Thursday to the public.

Member Rich inquired about the enclosure for the patio, if there would be an awning and the seating capacity. Mr. Skaggs responded that it would be black aluminum fencing per requirements for alcohol service, with some green space provided. He stated they are not proposing an awning, only the use of umbrellas. He believed that the patio would hold an additional 28 occupants.

Member Barringer questioned if they are operating the existing drive-thru with this business. Mr. Skaggs confirmed that they are operating the drive-thru in its existing location.

Member Rich inquired about entertainment or music out on the patio area. Mr. Skaggs stated that there would be no live entertainment, but they plan to have one speaker outside with the same music playing that is playing indoors.

Chair White questioned if there was any intention to expand the business based on the other site and also questioned the alcoholic beverage service. Mr. Skaggs stated that the alcohol service is a small portion of the business and more of a convenience to the customers. He stated that by law, no alcohol can be served through the drive-thru.

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

Secretary Vergun confirmed there was an affidavit of mailing on file with 9 returned envelopes.

Member Stevens asked Mr. Skaggs to comment on the parking and if he felt it was adequate. Mr. Skaggs responded that he feels the parking is adequate as his Flint location seats more people and has less parking and they have experienced no issues. He confirmed there is also a drive-thru at that Flint location and that the footprint for this restaurant is similar to that location.

MOTION by Lindquist, support by Vergun, in the matter of ZBA Case 12-13-5505, that the petitioner's request for the following non-use variances in order to construct outdoor seating (patio) for a restaurant: 1) A 35 foot variance from the requirement that the outdoor seating shall not be located within 200 feet of a residential district; and 2) A 5 parking space variance to the required total 57 spaces, is **GRANTED** as the petitioner did demonstrate practical difficulties exist based on the following:

- 1 Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose, that being a restaurant with a drive-thru and appropriate beer service license; or would render conformity with the ordinance unnecessarily burdensome, which use is a restaurant with drive-thru service.
- 2 That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners, which speaks to reasonable alternatives. It appears that this is not an unreasonable request with regard to other property owners, including the residential properties in the area that had lived there with the previous drive-thru Burger King at the same location.
- 3 That the petitioner's plight is due to unique circumstances of the property, given the shape and configuration of the existing restaurant; the fact that seating would be located in the front of the building on the street side and would be completely screened from the residential area to the rear of the building is a compelling reason to grant the variance. With respect to the

parking spaces, the drive-thru lanes and access space is reasonably addressed for a building of that size and there seems no compelling reason not to grant the variance given that the drive-thru is a substantial portion of the business.

4 The problem is not self-created as the property was purchased as is.

SUBJECT to the following conditions: 1) a single speaker is permitted in the outdoor patio area for music only as described by the applicant and to be played no louder than the music inside the restaurant; and 2) screening fence materials shall be as proposed by the applicant this evening.

MOTION CARRIED UNANIMOUSLY, 6-0

NEW BUSINESS:

- C. ZBA CASE: 1-14-5506
LOCATION: 24700 Orchard Lake Road
PARCEL I.D.: 23-23-151-012 ZONE: RA-1
REQUEST: In order to install a four (4) foot high metal fence in the front and exterior side yard, the following variance is requested: A one (1) foot height variance from the requirement that fences not exceed three (3) feet in height shall be permitted in the front and exterior side yard setback.
CODE SECTION: 34-5.12.C
APPLICANT/OWNER: Florin Gherghinis

Zoning Supervisor Randt discussed the location of the property and presented photos of the home and lot as well as drawings presented by the applicant. He explained that a one foot variance was required in order for the applicant to install a 4 foot high fence in the front and exterior side yard. The ordinance states that fences shall not exceed (3) feet in height in a front or exterior side yard setback.

Mr. Gherghinis, applicant, stated that he bought the property 5 years ago and was unaware of the zoning ordinance requirements for corner lots at that time with regard to fencing. He stated that he bought the property, which was a rental property and in bad shape; and he put a lot of money into renovating the home. He commented on the good relationship he has with his neighbors due to the improvements they made to the home. He explained that he is proposing a galvanized chain-link fence inside of the tree line, which eventually he feels would be screened by the existing trees. Mr. Gherghinis discussed issues with trespassers on the property being on a corner lot and having packages stolen off his front porch. He would like to get a large dog to help protect the property and feels that a large dog would easily jump a 3 foot fence. He feels a 4 foot high fence would provide for more privacy and security for both the dog and the property; and eventually for children.

Member Lindquist questioned the proposed 6 foot fence for a portion of the site that was noted on the plans. Mr. Gherghinis confirmed that he is only requesting a 4 foot fence.

Member Lindquist commented that the applicant could install a 3 foot fence with no variance and questioned if his reasoning for the 4 foot fence was only to secure the dog and to keep the kids in the yard in the future.

Mr. Gherghinis responded that there are a lot of deer in the area and they are on a corner lot with a lot of traffic; and he felt that the 4 foot fence would provide for better security. He felt a trained dog would remain in the yard with the 4 foot fence and that it would be more difficult for people to access his lot.

Mr. Lindquist disagreed and did not feel that a 4 foot high fence would make any difference. He felt screening with arborvitae would be a better option.

Chair White stated that he is not convinced that a fence, as proposed, would deter people from stealing packages from the porch.

Mr. Lindquist inquired if there were height restrictions on plantings. Zoning Supervisor Randt confirmed there were no height restrictions.

Member Rich inquired if the fence would completely enclose the property and where the gate would be located. Mr. Gherghinis responded that the property would be completely enclosed and gates would be located at both sides of the garage at a 45 degree angle.

Discussion was held on where packages would be delivered if the property were enclosed and issues with regard to a dog jumping the fence and/or creating more issues for delivery personnel to leave packages at the home.

Mr. Gherghinis mentioned that he had discussed evergreens with the city and it was not recommended as they were told it could create an area more conducive to theft. He also mentioned that the property to the south of his has a driveway that angles towards his home and the headlamps from the neighbor's car often shine into his bedroom.

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

Secretary Vergun confirmed there was an affidavit of mailing on file with 3 returned envelopes.

Chair White commented that he is not convinced every remedy has been fully exhausted by the applicant.

MOTION by Lindquist, support by Vergun, in the matter of ZBA Case 1-14-5506, that the petitioner's request for a non-use variance one (1) foot in height in order to install a four (4) foot high metal fence in the front and exterior side yard, is **DENIED** as the petitioner did not demonstrate practical difficulties exist in that he did not show that:

- 1 Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose. The applicant can utilize his front yard as is and any issues the applicant has experienced, it is felt that a three (3) foot high fence would serve the same purpose.
- 2 That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners. The property, if a variance were granted, would be out of character with other properties in the area along Orchard Lake Road
- 3 That the petitioner's plight is due to unique circumstances of the property. There is nothing specific about the property requiring a four (4) foot high fence.

In addition, if there is to be a large guard dog unattended in the yard, it is felt that the dog would have to be well trained to stay unattended in the yard due to the traffic and deer in the area; and to the extent that the dog were that well trained, would most likely not jump over a three (3) foot

fence; so it seems the four (4) foot fence would not serve the purpose for which it is intended. Also, the issue with the delivery of packages to the home would essentially be handled the same regardless if there was a fence or not because if the packages were too large, they would have to be left outside of the fence; and if able to be left inside the fence, delivery personnel would have to now deal with a large dog.

MOTION CARRIED 5-1 (Stevens opposed)

Mr. Gherghinis stated that he does not feel the case was judged as presented.

Chair White stated that the Board discussed the matter as advertised and has voted on the issue.

PUBLIC QUESTIONS AND COMMENTS:

Chair White recognized Mr. Azam Masood in the audience and as a potential member of the Zoning Board of Appeals.

Mr. Masood thanked the City for accepting his application as a possible Board member. He acknowledged the difficult decisions that the Board must make.

APPROVAL OF DECEMBER 10, 2014 MINUTES:

MOTION by Rich, second by Lindquist, to approve the December 10, 2013, Zoning Board of Appeals minutes as submitted.

MOTION CARRIED UNANIMOUSLY, 6-0

ADJOURNMENT

MOTION by Vergun, support by Barringer, to adjourn the meeting at 9:13pm.

MOTION CARRIED UNANIMOUSLY, 6-0

Respectfully submitted,

Daniel Vergun, Secretary
Zoning Board of Appeals

/pbs