

**MOTION SUMMARY
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
NOVEMBER 12, 2019**

CALL MEETING TO ORDER

Chair Vergun called the meeting to order at 7:30 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: **Irvin (alternate), King, Lindquist, Masood, Rich, Vergun**

Members Absent: **Barnette, Seelye**

Others Present: **Attorney Morita, Zoning Supervisor Randt, Recording Secretary McGuire**

SITE VISIT November 10, 2019

Chair Vergun noted when the Zoning Board of Appeals members visited the sites.

The Sunday site visit begins at 9:00 a.m. at City Hall. It is an advertised open, public meeting under the Open Meetings Act, and is only for informational purposes. The Board members abstain from any action, hearing testimony, or any deliberations.

APPROVAL OF AGENDA

MOTION by King, support by Irvin, to approve the agenda as published.

MOTION CARRIED 6-0.

OLD BUSINESS:

A. ZBA CASE: 9-19-5659
LOCATION: Southwest corner of Twelve Mile Road and Drake Road
PARCEL I.D.: 23-17-201-004
REQUEST: In an OS-4 Zoning District, the following variance is requested in order to build a 47 foot tall office building:
 1.) A 7 foot variance to the 40 foot maximum permitted height.
CODE SECTION: 34-3.1.22.E.
APPLICANT: John Valentine as agent for Owner, 32000 W. 12 Mile Rd., L.L.C. (formerly L. C. Trademarks, Inc.)
OWNER: 32000 W. 12 Mile Rd., L.L.C. (formerly L. C. Trademarks, Inc.)

Leroy Asher, Miller Canfield, 150 W. Jefferson Ste 2500, Detroit MI, speaking for the applicant, noted that this case had been adjourned in September to tonight's meeting, in order to give the Planning Commission time to discuss raising the height limit for non-residential districts. The Planning Commission had discussed this issue, and a Planning Commission public hearing was scheduled regarding an ordinance amendment to raise height limits. If the amendment was recommended by the Planning Commission and approved by City Council, this variance request would not be necessary. Therefore he was requesting another adjournment, until January 14, 2020.

MOTION by Masood, support by Irvin, to adjourn ZBA Case 9-19-5659 to the January 14, 2020 Zoning Board of Appeals meeting.

Motion carried 6-0.

NEW BUSINESS

A. ZBA CASE: 11-19-5660
LOCATION: 27452 Ten Mile
PARCEL I.D.: 23-24-476-015
REQUEST: In an RA-1 Zoning District, the following variance is requested to allow a newly built 1,152 square foot detached accessory building to remain: 1.) A 594 square foot variance to the maximum 1,250 square foot combined accessory use and building allowance.
CODE SECTION: 34-5.1.2.D.
APPLICANT/OWNER: Costel Stoian

Member Masood called the case.

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the location and background information for this variance request. A 24 foot by 32 foot, or 768 square foot area, detached accessory structure was approved for this property on July 3, 2019. The garage that was actually built was 24 feet x 48 feet, or 1,152 square feet in size.

Costel Stoian, 27452 Ten Mile Road, was present on behalf of this application for a variance of 594 square feet to the maximum 1,250 square feet combined accessory use and building allowance, in order to allow the newly built 1,152 square foot detached accessory structure to remain.

Mr. Stoian said he had requested a permit for a pole barn in order to have room to put everything he stored outside into an enclosed structure. He had several items covered with tarps and tents, all of which the neighbors had to look at. He wanted to park his boat on one side of the building and park his truck on the other side, so he could drive the truck in and change the oil or fix the brakes, etc. Both the boat and the truck would not fit within the approved size, so he did make the structure bigger than it was supposed to be. When he was just about finished with the construction he received a stop work order from the City. He was requesting a variance in order to keep the larger structure he had built.

Another accessory structure – a small shed – was there when he bought the property in 2001; he had simply improved it to look a little better. He used the shed for his trash bins, so that animals did not get into his trash. He would like to keep both accessory structures as now built.

Member Rich asked what else needed to be done to finish the pole barn. Mr. Stoian said it was complete except for the doors.

Member Rich pointed out that the pole barn was close to 50% larger than what was originally approved. Was the applicant planning on doing mechanical work in the structure?

Mr. Stoain said he was allowed a 768-square foot building; the pole barn as built was 1,152 square feet. He was not planning on doing any mechanical work for others on his property, but he was hoping to be able to repair his own vehicles in the pole barn.

Member Rich asked if anything would be stored outside under tarps or tents if the structure were allowed to remain. Mr. Stoain said nothing would be stored outside.

In response to a question from Member King, Zoning Supervisor Randt said the 72-square-foot shed had been part of the variance calculations

Chair Vergun pointed out that the property now had a pole barn, a shed, and an attached garage.

Member Masood said that one of the criteria for granting a variance was finding that the problem was not self-created. He asked the applicant to speak to this criteria.

Mr. Stoain said it was true the problem was self-created. When his friends were helping him build the pole barn he had decided to take a chance and make it larger. He was hoping to bring his boat from where it was stored on his brother's property, and have a large enough space to store his belongings.

Member King asked Mr. Stoian if he had discussed this variance request with his neighbor. Mr. Stoian said he had discussed it with his neighbor at 27442 Ten Mile Road. The neighbor had indicated he would send a letter but since then there had been a major winter storm and he had not been able to speak with his neighbor again.

Chair Vergun opened the public hearing. Seeing that no one came forward to speak, Chair Vergun closed the public hearing and brought the matter back to the Board.

Member Masood reported that there was an affidavit of mailing, with 2 returns.

Chair Vergun indicated he would entertain further discussion or a motion.

MOTION by Masood, support by King, in the matter of ZBA Case 11-19-5660, 27452 Ten Mile Road, to **DENY** the petitioner's request for a 594 square foot variance to the maximum 1,250 square foot combined accessory use and building allowance, in order to allow a newly built 1,152 square foot detached accessory building to remain, because the petitioner **DID NOT** demonstrate practical difficulties exist in this case in that he **DID NOT** set forth facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome.
2. 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.
3. The petitioner's plight is due to the unique characteristics and circumstances of the property.

4. The problem is not self-created.

Member King said he might have looked more favorably on this request if the applicant had offered to remove the small shed. The construction was of significant size and cost and was on a large property, but keeping the 2nd accessory structure seemed excessive. Also, he would have liked to see an affirmation of support from the neighbor most affected by this project.

Member Lindquist said that even if the 72-square-foot shed were removed, the variance request would still be for over 500 square feet. The original permit had allowed an accessory structure that was in compliance with the ordinance, even with the existing shed, and the plans approved by the Building Department were within ordinance requirements. The problem was clearly self-created and he would support the motion.

Chair Vergun agreed that the problem was self-created.

Motion to DENY carried 6-0.

B. ZBA CASE: 11-19-5661
LOCATION: 26811 Orchard Lake Road
PARCEL I.D.: 23-15-429-103
REQUEST: In an RA-2 Zoning District, the following variance is requested in order to allow a dumpster enclosure to be placed within the front yard: 1.) A variance from the requirement that dumpster enclosures may only be placed in the rear or interior side yards of a property.
CODE SECTION: 34-5.1.3.D.i.
APPLICANT: Edward Klatt for Michigan School of Professional Psychology
OWNER: Michigan School of Professional Psychology/Dr. Fran Brown, President

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the location and background information for this variance request, and pointed out the proposed location for the dumpster enclosure.

Diane Zalapi, Vice President of the Michigan School of Psychology, was present on behalf of this application for a variance in order to place their dumpster enclosure within the front yard. Dr. Fran Brown, President, and Edward Klatt, Director of Facilities Management, were also present.

The requested location for the dumpster enclosure was in the northeast corner of their parking lot, which was considered the front yard.

They were zoned RA-2, under a Special Land Use as a school. The building was constructed in 2003 with the parking lot in the front. There were wetlands on the sides and rear of the property, prohibiting access there. Therefore, the ordinance prohibition against dumpster enclosures in front yards created a practical difficulty in their case. The northeast corner, where they were requesting placement, was accessible, was completely screened from Orchard Lake Road by a berm, and screened from Oakland Drive by existing vegetation. The proposed location was the the location least visible from any public road and was furthest from any residential neighbors. Placing the dumpster enclosure in the northeast corner of the parking lot would most prevent any noise disruption to the neighbors.

Member Rich asked where the dumpster was supposed to be placed when the School was originally constructed. Zoning Supervisor Randt said they had not been required to have a dumpster at that time. City Attorney Morita added that the School had delivered their trash in bins to the curb, but as the School developed and enlarged, they found a dumpster was necessary. It came out in further conversation that the School was placing as many as 10 trash bins at the street.

Member King asked about the building to the south. Ms. Zalapi explained that in 2016 the School purchased the southern site, and after receiving Planning Commission approval, they were renovating that former home into school facilities. They were required to extend the drive and add parking around the new facility, which would be opening fall 2020. The two properties were combined into a single zoning lot and both were regulated under the same Special Land Use.

Member Irvin asked if the proposed dumpster location would affect the required number of parking spaces. Member Masood pointed out that the 10/14/2019 memorandum from City Planner Stec stated that granting the variance *would not create a parking deficiency for the school.*

In response to a question from Member King, Ms. Zalapi said the dumpster would serve both buildings.

Chair Vergun opened the public hearing. Seeing that no one came forward to speak, Chair Vergun closed the public hearing and brought the matter back to the Board.

Member Masood reported that there was an affidavit of mailing, with one return.

MOTION by King, support by Masood, in the matter of ZBA Case 11-19-5661, 26811 Orchard Lake Road, to **GRANT** the petitioner's request for a variance from the requirement that dumpster enclosures may only be placed in the rear or interior side yards of a property, in order to allow a dumpster enclosure to be placed within the front yard, because the petitioner **DID** demonstrate practical difficulties exist in this case in that she **DID** set forth facts which show that:

1. Compliance with the strict letter of the ordinance would render conformity with the ordinance unnecessarily burdensome.
2. 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.
3. The petitioner's plight is due to the unique characteristics and circumstances of the property.
4. The problem is not self-created.

Member Masood commented that he felt the layout of the building on the parcel was unique. It was also flanked with wetlands which made the side yards unusable. The proponent had said they were planning on screening the dumpster with greenery.

Chair Vergun and Member Rich asked that the motion require the dumpster enclosure be constructed in the location and as described on the application materials, and as further described during tonight's

meeting, with the enclosure shielded by landscaping from both Orchard Lake and Oakland Roads, and that the landscaping be maintained for as long as the enclosure exists at this location.

Maker of the motion King and Second Masood agreed to these conditions.

With the following conditions:

- Dumpster enclosure location be consistent with what is shown on the submitted plans.
- Existing landscape screening remain and be maintained for the life of the enclosure.

Motion to GRANT carried 6-0.

C. ZBA CASE: 11-19-5662
LOCATION: 28924 Wellington
PARCEL I.D.: 23-12-152-037
REQUEST: In an RA-1A Zoning District, the following variance is requested for a newly constructed shed to remain located 2 feet from the property line: 1.) A 13 foot variance to the 15 foot required side yard setback.
CODE SECTION: 34-5.1.2.A.; 34-5.1.2.B.
APPLICANT/OWNER: Ryan Kamphuis

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the location and background information for this variance request, and indicated on an aerial the location of the shed on the property.

Ryan Kamphuis, 28924 Wellington, was present on behalf of this application for a 13-foot variance to the 15-foot required side yard setback, in order to allow a newly constructed shed to remain located 2 feet from the property line.

Mr. Kamphuis explained that they had started construction of the 10 foot x 12 foot garden shed in December 2018. Their large lot presented a challenging site with a steep slope in the back yard and a pond and a creek at the bottom of the lot, which regularly flooded. They selected the location for the shed near the top of the lot on one of the few flat parts of their property.

Mr. Kamphuis further described the construction of the shed, including the 6 pieces of 10 inch diameter reinforced concrete piers with 14 inch spread-base depth, and showed a site plan of his property and the eastern neighboring property, pointing out the vegetation between the street and the shed as well as between the neighboring property and the shed.

Member King asked the history of the 6.5-foot side yard setback of the home. Mr. Kamphuis said the home was in its original location, and had been built in 1954.

Member King asked Mr. Kamphuis if he had discussed this variance request with his eastern neighbor at 28900 Wellington. Mr. Kamphuis distributed a letter of support dated November 2, 2019 from those neighbors, Axel and Carrie Broderman. 28900 Wellington also had an accessory structure close to that property line.

Zoning Supervisor Randt explained that until about 15 years ago, accessory structures could be placed two feet from the side yard property line, and many such structures existed in the City. Now detached accessory structures had to conform with the setbacks of the zoning district in which they were located.

Chair Vergun acknowledged that much of the subject site was not flat or dry. He asked if the applicant had given any thought to constructing a smaller shed that might have been placed further to the west than the requested location.

Mr. Kamphuis said they had looked at other locations and sizes. The 10 foot by 12 foot size was not large, and the location selected had the least amount of slope. Moving the shed further into the center of the property would actually make it more visible to the neighbors because the landscape shielding would be reduced with that sight-line.

Member Rich noted that the letter of support mentioned “we have seen pictures of the shed design.” Was the shed construction completed? Mr. Kamphuis said that while the shed was partially completed, it had no cladding. The shed would have cedar cladding and a metal roof, as shown in the application documents.

In response to a question from Member Rich, Zoning Supervisor Randt explained that sheds under 200 square feet did not need a permit. Rat walls and footings were recommended but not required. Property owners were required to follow setback requirements, and those requirements could be explained by the Planning Department upon request.

Chair Vergun opened the public hearing.

Albert Smith, 28582 Westbrook Court, said he lived diagonally across the street from the applicant. He was also a member of the Board of Directors of the Wood Creek Homeowners Association. The Association’s position was that they did not oppose this application. They had been in contact with the direct neighbors to this site and the neighbors supported the variance request.

Seeing that no one else came forward to speak, Chair Vergun closed the public hearing.

Member Masood reported that there was an affidavit of mailing with one return.

MOTION by Masood, support by Irvin, in the matter of ZBA Case 11-19-5662, 28924 Wellington, to **GRANT** the petitioner’s request for a 13 foot variance to the 15 foot required side yard setback, in order to allow a newly constructed shed to remain located 2 feet from the property line, because the petitioner **DID** demonstrate practical difficulties exist in this case in that he **DID** set forth facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome.
2. Granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district.
3. The petitioner’s plight is due to the unique characteristics and circumstances of the property.

4. The problem is not self-created.

With the following condition:

- The shed be located in conformance with the plans as presented, and with the design, materials, color, and make as submitted.

Member Masood said he was supporting this variance request based on the finding that the rear of the property contained a steep grade as well as a pond and a flood zone. Further, the neighbor at 28900 Wellington – who would be most affected by this variance – had supported the request with a letter to the Board, and the Homeowners’ Association representative had said they would not oppose the variance.

Motion to GRANT carried 6-0.

D. ZBA CASE: 11-19-5663
LOCATION: 37283 Timberview Lane
PARCEL I.D.: 23-08-304-015
REQUEST: In an RA-1 Zoning District, the following variances are requested in order for
for
a house and patio to remain in its current locations: 1.) A 3.4 foot variance from the minimum 10 foot side yard setback for the patio; and 2.) A 9.4 foot variance from the minimum 35 foot rear yard setback for the home
CODE SECTION: 34-3.1.4.E.
APPLICANT/OWNER: Sammy Qarana

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the location and background information for this variance request. The placement of the home and patio had been approved by City departments throughout the construction process. However, after further review, the City determined that setback variances were needed in order for the house and patio to remain in their current location.

Patrick Qarana, Sammy Qarana’s son, was present on behalf of this application for variances in order for the house and patio to remain in their current location. Sammy Qarana, 37283 Timberview Lane, was also present.

Mr. Qarana said that plans for the home were approved by the City on August 6, 2018, and the home had been built in accordance with the approved site plan. Correct process had been followed and the project had been inspected numerous times. On September 27, 2019 final building inspection approval was received, and on October 8, 2019 final grade inspection was approved. They were supposed to receive final Certificate of Occupancy on October 11, 2019. On October 10 the City brought to their attention that although the original site plan had been approved, and the home was built according to that plan, an error had been made regarding setback requirements. Therefore they were requesting the two setback variances as described.

City Attorney Morita explained that the lot had been treated as a pie-shaped lot when the original approvals were given. However, based on the curve of the street and sidewalk in front of the lot, it was technically a corner property and therefore the location of the home didn’t meet requirements. The situation was unique in that the home had been built before this determination had been made, and the lot itself was not a typical one, located as it was on a small cul de sac.

Mr. Qarana pointed out that if this had come up earlier they could have easily changed the orientation of the home so that variances would not be necessary.

Member Irvin confirmed that the property lines had not changed, and the home had been built according to the approvals granted.

In response to a question from Member Masood, Mr. Qarana said the investment in the home was approximately \$.5 million.

Member Masood asked what would happen if the Board denied the variance request. Zoning Supervisor Randt explained that the applicant would have to reconstruct the home in order to meet zoning requirements. This would involve some level of demolition.

Noting that the applicants were asking for 2 variances, Chair Vergun opened the public hearing.

Dr. Ardeshir Irani, 28338 Timberview Court, said that he owned the home to the rear of this property. While he understood the situation as described, he was concerned regarding how close the Qarana home was to their home, and how that impacted the view from their rear bedroom and back yard. He asked that his property be screened from the subject property by a line of arborvitae for the 80+ feet of their mutual property line. Also, he wanted assurance that the patio would remain uncovered.

Chris Paulson, 37271 Timberview Lane, said that he was the adjacent neighbor on Timberview. He had no issues with the house as built, and supported the two variance requests.

Seeing that no one else came forward to speak, Chair Vergun closed the public hearing and invited Mr. Qarana to respond to the comments that had been made.

Mr. Qarana pointed out the rear patio line of the subject home and how it aligned with the property line as well as Dr. Irani's home. He said they had the cost of the 86-foot arborvitae screen quoted; it was approximately \$11,000. It seemed unfair to have to incur this cost because of a mistake the City had made. Again, the home was approved after all inspections, and the patio was inspected and approved by the Building Official.

Mr. Qarana said he had met with Zoning Supervisor Randt, City Planner Stec, and the adjacent homeowners to try to resolve the situation, and at that time Mr. Qarana had indicated they might be willing to put in the row of arborvitae. But after further discussion with City Planner Stec, Mr. Qarana more clearly understood that they had met all setback requirements of a pie-shaped lot. If they had known the City was going to require setbacks for a corner lot, they would have changed the orientation of the house before construction began. However, this information was brought to them the day before they were to receive their Certificate of Occupancy. They did not think they should be required to plant the row of arborvitae for something that was not their mistake.

In response to questions from Member Lindquist, Mr. Qarana said that his parents would live in the home. He and his father were the builders.

Member Lindquist asked about the notations made on the site plan at the property line. Mr. Qarana said after they had initially said they might be willing to put in the 86-foot row of arborvitae, they later thought

55 feet might be more appropriate. However, after further thought and discussion, they had decided they should not be required to put up any screening at all, since they had built their home according to the approved site plan.

Member Lindquist asked how the applicants would respond if the Board granted the variance conditioned on some level of screening. Would they alter the location of the patio, for instance?

Mr. Qarana said moving the patio, which was already constructed, would be expensive. They did not understand why they were being asked to spend extra money when they had followed correct process and had approvals for the completed work.

Chair Vergun asked for Board discussion and/or a motion.

Masood reported that there was an affidavit of mailing with six returns.

Chair Vergun said he would consider requiring some level of screening. At the same time, he did not want to create a difficult enforcement issue for staff.

Member Irvin said that after the applicant had gone through due process, done what was required, only to discover at the last minute that an error had been made, it seemed unfair to put more restrictions and cost on the homeowner such as a green fence. He respected the adjacent homeowners who wanted privacy, but this was a unique situation, and it seemed unfair to put any more requirements on the applicant before allowing them to move into their home.

Member Masood agreed this variance request was the result of a City oversight. He hoped the neighbors would be able to work out an amicable solution.

Member Rich said this was a difficult situation with two innocent parties. He asked Dr. Irani if lesser screening would be agreeable, that would screen only the patio area, since that was the area that encroached into the side yard setback. The house itself did not encroach.

Dr. Irani said he would need more screening than just for the patio. The new home was situated very close to the property line and they needed privacy. Also, they could not plant any trees on their property line because of the sewer easement there.

In response to a question from Member Rich, Mr. Qarana said the patio was approximately 29 feet wide, and ran parallel to the property line.

Member Rich said as there were two innocent parties in this matter, and because the patio was encroaching 3.4 feet into the side yard setback for 29 linear feet, he would be in favor of requiring screening for the patio area only. If the patio were not there, no screening would be needed or required, as the house met the setback requirements. The Irani's might not like having the house so close, but it was within the allowed location on the site.

Member Lindquist agreed. The part of the patio that was encroaching into the setback should be screened. Such a requirement would recognize the competing interests in this case. If Dr. Irani wanted more than the patio screened, he would need to provide that screening himself.

Attorney Morita asked about the location of the storm sewer easement. Mr. Qarana explained the storm sewer easement was entirely on the neighbor's property.

Mr. Qarana again reviewed the construction process, and repeated that he did not feel they should be required to incur extra costs to remedy the setback situation. Also, their construction was 3.6 feet further from Mr. Irani's house than the adjacent home to the south, which had a covered porch.

Discussion was held as to the ZBA's role in this situation. Chair Vergun said he tended toward giving weight to the approvals the applicants had received during the construction process.

Zoning Supervisor Randt said the City had tried to mediate the screening issue between the two neighbors. Mr. Irani wanted screening for the entire property line, and at the time of the meeting, Mr. Qarana had offered to provide that screening. Later, the applicant submitted a site plan to City Planner Stec that revised the screening so that it shielded a lesser area of the property, mainly just the patio, and ultimately, the effort to mediate a resolution had been unsuccessful.

Mr. Qarana explained that as described he had met with the adjacent neighbors; the Homeowners' Association President was also at that meeting. The outcome of that discussion was not a formal agreement, and after discussing the solution of providing a full screen further with his father and with City Planner Stec, he had first thought to provide a lesser 55 feet of screening. After further reviewing the ordinances with the City Planner and with his engineer, and after he understood more clearly that they had met all setback requirements for a pie-shaped lot, which was how the original site plan had been reviewed, he did not think they should be required to plant any screening at all. He explained that when the matter was first brought to their attention he had thought they had done something wrong, and they wanted to make things right. But after further thought and understanding, they did not think they should spend the \$10,000 - \$12,000 to put up a landscape barrier for an issue that they did not create. He did not feel they needed to provide screening so the neighbor did not have to look at their driveway or their house. Also, the arborvitae being discussed grew to 4-foot diameter, 14-15 tall trees and would need to be maintained; this was more than a one-time expense.

Chair Vergun noted that if landscape screening was required as a condition of approval, a timeframe for planting would need to be included in the motion.

Member Irvin said that as the applicants had followed proper procedures, and received all appropriate approvals during the construction process, only to discover the day before they were to receive a C of O that the setback issue existed because the lot was not pie-shaped but was a corner lot, and because he felt this last-minute problem was due to the City's oversight failure, he would support granting both variances, without conditions, and offered the following motion:

MOTION by Irvin, support by King, in the matter of ZBA Case 11-19-5663, 37283 Timberview Lane, to GRANT request 1.) A 3.4 foot variance from the minimum 10 foot side yard setback for the patio; and request 2.), a 9.4 foot variance from the minimum 35 foot rear yard setback for the home, in order for the house to remain in its current location, because the petitioner DID demonstrate practical difficulties exist in this case.

Member Lindquist said he would vote against the motion because some screening would provide relief to the equally innocent adjacent homeowner, and some limited amount of screening was appropriate. He felt the applicant might have overstated the cost of the landscape screening. The trees themselves did not need

to be higher than 6 feet. In order to meet the requirement that granting the variance would do substantial justice to the petitioner as well as other property owners in the district, some screening was necessary. He felt that screening the 29-foot width of the patio area would be appropriate.

Discussion followed. Member Lindquist believed only 7-8 arborvitae trees would be necessary, with the requirement they be at least 6 feet tall.

City Attorney Morita pointed out that there was motion on the floor to grant the variances with no conditions. If the motion did not receive 4 votes, the variances would be denied.

City Attorney Morita further advised that it was not uncommon for the Board to require some type of landscaping or screening as a condition for granting a variance. Generally the law did not allow property owners to benefit from a mistake of the City. In general, when building permits and approvals were issued when they shouldn't have been – and this did happen – this did not cause liability to the City and the City was not necessarily responsible. It was always up to the property owner to make sure they were coming in with the right plans and the right distances.

The current situation was unique because of the geography of the lot and the way it was situated with curvilinear arcs on the street, and the requests should be treated as normal variance requests, subject to any appropriate conditions as decided by the Board.

Chair Vergun agreed that it was not unprecedented to add a condition for a landscape requirement. While it was true that this was an unusual situation, if the motion failed, it would be the end of this case.

Member Rich suggested taking up each variance request separately, as the request for a 9.4 foot variance from the minimum 35-foot rear yard setback appeared to be fully supported by the Board.

Maker of the motion Irvin amended his motion, and Second King agreed, as follows:

Regarding variance request 2:

MOTION by Irvin, support by King, in the matter of ZBA Case 11-19-5663, 37283 Timberview Lane, to **GRANT** request 2.), a 9.4 foot variance from the minimum 35 foot rear yard setback for the home, in order for the house to remain in its current location, because the petitioner **DID** demonstrate practical difficulties exist in this case in that he **DID** set forth facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome.
2. 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.
3. The petitioner's plight is due to the unique characteristics and circumstances of the property.
4. The problem is not self-created.

Motion to GRANT carried 6-0.

Chair Vergun recognized Mr. Qarana, who spoke to the costs of planting and maintaining the arborvitae. He reiterated that he was not responsible for this situation.

Attorney Morita advised that it was not the Board's purview to decide responsibility for this issue, nor was such a discussion appropriate this evening. She invited Mr. Qarana to call her office tomorrow if he wished to discuss issues of responsibility further.

Chair Vergun indicated he would entertain a motion regarding the 1st variance request.

Regarding variance request 1:

MOTION by Lindquist, support by Rich, in the matter of ZBA Case 11-19-5663, 37283 Timberview Lane, to **GRANT** request 1.), a 3.4 foot variance from the minimum 10 foot side yard setback for the patio, in order for the patio to remain in its current location, because the petitioner **DID** demonstrate practical difficulties exist in this case in that he **DID** set forth facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome.
2. Granting the variance request, with appropriate conditions, would do substantial justice to the petitioner as well as to other property owners in the district.
3. The petitioner's plight is due to the unique characteristics and circumstances of the property.
4. The problem is not self-created.

With the following conditions:

- 30 lineal feet of evergreen screening be provided along the property line parallel to the outside edge of the patio, perpendicular to the edges of the patio and the property line.
- Plantings to provide, upon maturity, a solid evergreen screen at least six feet from grade at the property line.
- Location, especially regarding the neighboring easement, and species type to be approved by the appropriate City department.
- Screening must be established within one (1) year.

Chair Vergun said he would support the motion.

Member Lindquist said his motion was not intended to be punitive, but was intended to provide justice to the adjacent homeowner, as well as the applicant, in the hope that the motion would pass and the variance be granted.

Members Rich, Masood and King indicated that they were inclined to support the motion as stated. Member Irvin remained opposed to the conditions for approval.

Motion to GRANT carried 5-1 (Irvin opposed).

PUBLIC QUESTIONS AND COMMENTS: None.

APPROVAL OF MINUTES: September 10, 2019

MOTION by King, support by Masood, to approve the Zoning Board of Appeals minutes of September 10, 2019 as presented.

Motion carried 6-0.

ADJOURNMENT

MOTION by Rich, support by King, to adjourn the meeting at 9:49 p.m.

Motion carried unanimously.

Respectfully submitted,
Adam Masood, Secretary

/cem