

**MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
CITY HALL – COUNCIL CHAMBER  
NOVEMBER 10, 2015**

**CALL MEETING TO ORDER**

Chair Seelye 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: Barringer, Lindquist, Masood, Paramesh, Rich, Seelye, and Vergun

Members Absent: Stevens

Others Present: Attorney Morita and Zoning Division Representative McGuire

**SITE VISIT NOVEMBER 1, 2015**

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

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 with the addition of a discussion item at the end of the agenda regarding ZBA Case 10-15-5571.

**MOTION CARRIED 7-0**

**OLD BUSINESS**

A. ZBA CASE: 10-15-5572  
LOCATION: 28806 Grand River Avenue  
PARCEL I.D.: 23-36-326-020  
REQUEST: In order to build a 14 foot 2 inch tall pole sign and retain existing location in a B-3 zoning district, the following special exception is requested: (1) **4 foot 10 inch special exception** to the 9 foot 4 inch height.  
CODE SECTION: 34-5.5.3.B.  
APPLICANT: Aver Sign Company  
OWNER: Rami Farhat-President, Rami Enterprises, Inc. and Robert Barrick-President, Barrick Enterprises, Inc.

As the proponent was not present when first called, this item was heard second on the agenda.

**NEW BUSINESS:**

A. ZBA CASE: 11-15-5577  
LOCATION: 22915 Canfield  
PARCEL I.D.: 23-25-351-022

REQUEST: A variance from the restriction of storage of recreational equipment or trailers over 6 feet in height in an RA-3 Zoning District to be located in the rear yard only, in order to store a recreational vehicle exceeding 6 feet in height in the front yard.

CODE SECTION: 34-5.7

APPLICANT/OWNER: Emilie Harvey

Note: This item was heard first as the proponent was not yet present for Old Business A: 10-15-5572.

Zoning Representative McGuire discussed the location and presented an aerial map of the property, along with other photos and schematics of the lot, and a photo of the recreational vehicle in question. She explained that the ordinance prohibited the storage of any recreational vehicles in a front yard. If the vehicle was under 6 feet it could be stored in an interior side yard, and if it was over 6 feet it could be stored in a rear yard. A previous variance had been granted for the location of an accessory structure (shed) in the front yard.

Emilie Harvey, 22915 Canfield, was present on behalf of this application. She explained that she had no side or front yard, as the yard behind her house was steep, with a 20-foot retaining wall leading to the creek behind her property.

In response to questions from Chair Seelye, Ms. Harvey said she had purchased the camper during the summer specifically to help their terminally ill son-in-law. They were planning on storing the camper on the property during winter months also. Rent at storage facilities was expensive; she was on a fixed income.

Member Rich asked if Ms. Harvey had received any feedback from the neighbor across the street at 22950 Canfield. Ms. Harvey said that when she first purchased the trailer they had just backed it in at the end of the street, and that neighbor actually liked it in that location. However, that was not the Harvey's property and she understood she could not store it there. Right now the camper was at her daughter's.

Member Rich confirmed the proposed location of the camper, just to the west and slightly in front of the shed.

Member Lindquist asked if it was possible to move the trailer further to the south. Zoning Representative McGuire pointed out that the southern property was very close to the proposed location; there was not much room to move it further south. Ms. Harvey said she would move it as far south as she could.

Chair Seelye opened the public hearing. Seeing that no one came forward to speak, Chair Seelye closed the public hearing.

Member Lindquist noted that a letter in opposition to the variance request had been received from Mr. Clark at 28905 Grayfield.

Member Lindquist asked the height of the trailer in question. Ms. Harvey said the trailer was 9 feet tall. She was the title holder for the trailer. They would use the trailer for camping with her daughter and grandchildren in the future.

Chair Seelye asked Ms. Harvey if the camper could be stored at her daughter's, where it was right now. Ms. Harvey said it was not possible to do this on a long-term basis.

Member Masood indicated he was ready to offer a motion.

**MOTION** by Masood, support by Lindquist, in the matter of ZBA Case 11-15-5577, to DENY the petitioner's request for a variance from the restriction of storage of recreational equipment or trailers over 6 feet in height in an RA-3 Zoning District to be located in the rear yard only, because the petitioner did not demonstrate practical difficulty, in that compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property for a permitted purpose. It is a residence and not a storage facility for trailers. The petitioner's plight is not due to any unique circumstances of the property and the problem is entirely self-created.

Member Rich said that he had viewed the property when there were multiple vehicles in the driveways on the street, and with all the vehicles there it was pretty difficult to see the area where the trailer would be stored. If there were no vehicles in the driveways, it would be possible to see the trailer. Member Rich referred to an email from Mr. Clark who lived on Grayfield, and noted that while he understood Mr. Clark's concerns in opposition to the variance, Mr. Clark had acknowledged that he could not see the trailer from his home. Mr. Clark had seen the trailer when it was parked at the end of the street, and not in the location that was now proposed by the homeowner. With the trailer in the proposed location, Mr. Clark would have to actively look for the trailer as he drove down Grayfield. Member Rich concluded that he was inclined to grant the variance.

Member Barringer said that he concurred with Mr. Rich's comments. He had driven up and down Grayfield with this in mind, and drivers on Grayfield would not really see the trailer unless they were looking for it.

Motion failed 2-5 (Lindquist, Rich, Vergun, Paramesh, Barringer opposed).

**MOTION** by Rich, support by Barringer, in the matter of ZBA Case 11-15-5577, to GRANT the petitioner's request for a variance from the restriction of storage of recreational equipment or trailers over 6 feet in height in an RA-3 Zoning District to be located in the rear yard only, in order to store a recreational vehicle exceeding 6 feet in height in the front yard, because the petitioner did demonstrate practical difficulties exist in this case in that she set forth facts which show that:

1. Compliance with the strict letter of the ordinance, while not unreasonably preventing the petitioner from using the property as a home, does 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, as long as the trailer is parked where indicated.
3. That the petitioner's plight is due to the unique circumstances of the property; because of the steep drop off and the non-existence of a backyard there really is no other place to park the trailer.
4. That the problem is not self-created; the topography of the property, the house was already built where it was built such that there is not a backyard or any real side yard. The fact that the proponent has a trailer at all is self-created but applicants come before the Board in order to request variances as most things that require variances have some degree of the individual seeking to do something that they otherwise would not be permitted to do.

**SUBJECT** to the following conditions:

- The trailer is to be parked in the location where the stakes have been placed; however, the trailer is to be moved as far south as possible within the parameters of where the stakes are located.
- The variance shall only apply to a trailer of the exact same dimensions as this particular trailer.
- The trailer must be well maintained, it shall not be allowed to become an eyesore as a result of decay or otherwise.

**MOTION CARRIED 5-2 (Masood and Seelye opposed)**

Chair Seelye returned to the Old Business portion of the motion, as the proponent for Case 10-15-5572 was now present.

**OLD BUSINESS**

- A. ZBA CASE: 10-15-5572  
LOCATION: 28806 Grand River Avenue  
PARCEL I.D.: 23-36-326-020  
REQUEST: In order to build a 14 foot 2 inch tall pole sign and retain existing location in a B-3 zoning district, the following special exception is requested: (1) **4 foot 10 inch special exception** to the 9 foot 4 inch height.  
CODE SECTION: 34-5.5.3.B.  
APPLICANT: Aver Sign Company  
OWNER: Rami Farhat-President, Rami Enterprises, Inc. and Robert Barrick-President, Barrick Enterprises, Inc.

Zoning Representative McGuire explained that this case had been before the Board at the October 13, 2015 meeting, but had been adjourned so that ownership issues could be resolved. She showed the location and presented an aerial map of the property, along with photos of the existing and proposed sign. Zoning Representative McGuire explained that the current sign had previously been granted a special exception for a 0 foot setback from a required 15 foot setback, and had also previously received a special exception for height, being 9'4" when 8 feet was normally permitted.

Mike Berry, 28806 Grand River Avenue, was present on behalf of Rami Enterprises and this application. He explained that the existing sign was subject to vandalism, and in fact had been vandalized twice. He distributed a photo of the sign after it had been damaged, and explained that the current cover over the sign was because of this situation. They wanted to upgrade the sign to LED lights, which was the industry standard. He was concerned about spending the money to upgrade the sign and have it vandalized yet again because of its low location. Mr. Berry noted that raising the sign would also increase safety for people turning out of Whittington, allowing drivers a better view directly under the sign. Mr. Berry explained that the higher sign would not be out of character with the area, as two gas stations to the north did have higher signs. Mr. Berry distributed pictures of the vandalized sign, of the traffic situation from Whittington, and of other higher signs in the area.

Member Lindquist asked about ownership issues of the property as discussed at the October meeting. Mr. Berry said he represented Rami Enterprises, who were the owner/operators of the gas station and who were purchasing the property under land contract from Barrick Enterprises. City Attorney Morita said she was satisfied with the ownership documents as presented, and with the signatures on the application form,

which included the signature of Robert Barrick, the owner of record with the City Assessor's office. City Attorney Morita advised Mr. Berry that he did need to update his paperwork with the City Assessor, including a copy of any land contract, etc. showing Rami Enterprises as owner.

In response to a question from Member Lindquist, City Attorney Morita said that both Mr. Barrick as owner and the tenant Rami Enterprises were subject – jointly and severally – to code enforcement on the property.

In response to a question from Member Lindquist, Zoning Representative McGuire said the case being heard tonight was exactly the same as that noticed for the October 13, 2015 meeting.

Member Rich noted that an existing sign was shown on the site plan to the southeast of the site. Mr. Berry said this was in error, and there was no sign at that location.

Member Rich also noted that the proposed sign was different than the existing sign in that the proposed sign only showed places for 3 gas prices. The existing sign showed 4 prices. Discussion followed regarding the proposed sign. If only 3 gas prices were shown, the sign could be lowered somewhat.

Mr. Berry said that he had not thought that the sign had to be exactly as depicted for tonight's meeting. He thought the proposed sign was only illustrating the proposed height.

Member Rich said that usually a variance – if granted – was based on exactly what was shown the Board.

Mr. Berry said that he did not want to change the sign except to raise it higher and to add LED lighting. He had not intended for the sign company to show a different sign.

Chair Seelye confirmed with City Attorney Morita that the proposed sign as shown was what was being discussed this evening. Mr. Berry again affirmed that he would like to keep his sign in terms of dimensions, with raising the overall height and adding LED lights being the only changes.

Chair Seelye opened the public hearing. Seeing that no one came forward to speak, Chair Seelye closed the public hearing.

**MOTION** by Lindquist, support by Rich, in the matter of ZBA Case 10-15-5572, to GRANT the petitioner's request for a special exception for a 4 foot 10 inch special exception to the 9 foot 4 inch height, because the petitioner did demonstrate the requirements for a special exception existed in this case and set forth facts which show that:

1. There are circumstances or features that are exceptional or unique to the subject property and are not self-created; the diagonal orientation of the road and the landscaping previously prescribed by the City.
2. Failure to grant relief would result in substantially more than mere inconvenience of financial expenditures or would unreasonably prevent or limit the use of the property or unreasonably preclude the viability or identification of a nonresidential building on the property; the proposed sign improves the visibility of the property both as identifying the location as a gas station and also to understand where the entrances and exits are without blocking the visibility of the exiting drivers from the exit curb cut or the adjacent street.

3. The special exception will not result in a sign or condition that is incompatible with the surrounding properties and does substantial justice to both the applicant and the adjacent and surrounding properties.
4. The special exception will not result in a sign or condition that has an adverse effect on the essential character or aesthetics of the establishment or surrounding area

**SUBJECT** to the following conditions:

- The property will be brought into compliance with the landscape plan by May 2016.
- The sign constructed will be of similar type materials, shape and size as presented and shall be consistent with either of the two examples; the existing example or the example showing three prices.
- The motion acknowledges that the proposed sign is slightly smaller than the existing sign. The dimensions of the sign shall be the same as the proposed sign as depicted or smaller.
- The applicant, Rami Enterprises, and owner, Barrick Enterprises, shall be jointly and severally responsible for meeting all conditions of the special exception grant.

**MOTION CARRIED 7-0.**

Chair Seelye returned the meeting to the New Business portion of the agenda.

**NEW BUSINESS (returned)**

B. ZBA CASE: 11-15-5579  
LOCATION: 30470 Grand River  
PARCEL I. D.: 23-35-129-020  
REQUEST: A 15 foot special exception to the 15 foot setback requirement in a B-3 Zoning District in order to build a monument sign.  
CODE SECTION: 34-5.5.3.B.M.  
APPLICANT: Advanced Veterinary Medical Center  
OWNER: Elbola Holdings, L.L.C.

Zoning Representative McGuire discussed the location and presented an aerial map of the property, and showed photos of the site and schematics of the proposed monument sign. She noted that the request had changed in that only a 14 foot special exception was not being requested, instead of the 15 foot special exception as noticed. This change was a result of conversations between the applicant and the City's Traffic Engineer. The existing sign, which would be removed, was nonconforming in terms of height and location.

Dr. Eric Larsen, 45798 Buckley, Canton, MI and owner of Advanced Veterinary Medical Center, was present on behalf of this application. Utilizing overhead slides, he explained that the property was located right at the split of Grand River Avenue. Their only true frontage on Grand River was west bound. From that direction there were many visual obstructions to both the existing signage and also to the location where a sign would normally be allowed. In addition to the limitation provided by the road itself, the landscaping in that area also blocked the view. They felt a monument sign would have better visibility for traffic heading west. Also changing from a static to LED sign would provide some visibility for east bound traffic before they veered off due to the split in Grand River Avenue.

Dr. Larsen said that they had installed a new parking lot and were putting in a new façade for their building along with upgrading all their landscaping. This had been done with the Grand River Visioning Plan in mind; they wanted to be visible and to be a showplace for the community.

Dr. Larsen explained the dimensions and configuration of the proposed sign, along with the proposed location. He noted that the current sign actually overhung the sidewalk. He explained the proposed location for the new sign had been modified after conversations with the City's Traffic Engineer and he showed schematics that showed the new location. The sign would now be out of the corner clearance area for Springbrook and Grand River Avenue, provided a clear view of the sidewalk, and as already mentioned, provided a 1-foot setback, so that the request was now for a 14-foot setback exception.

Chair Seelye noted that the berm was 16 feet wide and the sign was 8 feet wide. Would the applicant be willing to split the difference, placing the sign 4 feet from the sidewalk? Dr. Larsen said that moving the sign further back would place it in conflict with the trees on site and along the right of way to the east.

In response to a question from Chair Seelye, Zoning Representative McGuire referenced the November 9, 2015 memo from City Engineer Saksewski, in which Mr. Saksewski noted that the sign as now proposed was out of the corner clearance area and provided sight distance for the sidewalk.

Member Rich pointed out that the existing nonconforming sign appeared to offer more visibility than the proposed sign. The problem with the existing sign was that it was dark and old.

Dr. Larsen explained the existing sign was grandfathered and nonconforming. The ordinance would not allow them to adjust or change the shape of the sign in any way. They had examined the possibility of putting LED lights in the existing sign but unfortunately the pole was aged, and for safety reasons the sign manufacturer would not recommend putting a heavier LED sign on to the existing pole. He pointed out that the sign proposed this evening would be more conforming than the existing sign.

Member Lindquist asked about the planned frequency of change for the proposed LED sign. Dr. Larsen said he would conform to City ordinances. The proposed sign had special photo cells so that on cloudy days and at night the lights would dim.

In response to a question from City Attorney Morita, Dr. Larsen said that he was 50% owner Elbola Enterprises.

Chair Seelye opened the public hearing.

Dan Irvin, Executive Director for the Greater Farmington Area Chamber of Commerce, 33425 Grand River, Suite 101, Farmington MI, said the Chamber had taken a position of support for this special exception request. The new sign would be an asset for the community and would be a step forward for the CIA (Corridor Improvement Authority).

In response to a question from Member Lindquist, Mr. Irvin said Advanced Veterinarian was a member of the Chamber and had requested that the Chamber communicate its support this evening.

Seeing that there was no further comment, Chair Seelye closed the public hearing.

**MOTION** by Lindquist, support by Vergun, in the matter of ZBA Case 11-15-5579, to GRANT the petitioner's request for a 14 foot special exception to the 15 foot setback requirement in a B-3 Zoning

District in order to build a monument sign, because the petitioner did demonstrate the requirements for a special exception exist in this case and set forth facts which show that:

1. There are circumstances or features that are exceptional or unique to the subject property and are not self-created; the conditions of the surrounding properties, the shape of the roadway and the divided highway at that particular location on Grand River Avenue.
2. That failure to grant relief would unreasonably preclude the visibility or identification of a non-residential building on the property.
3. The special exception will result in substantial justice being done to both the applicant and the adjacent and surrounding properties; it is a sign that is not incompatible with and does not unreasonably interfere with adjacent or surrounding properties, and is not inconsistent with the spirit with the Zoning rules.
4. The special exception will not result in a sign or condition that has an adverse effect on the essential character or aesthetics of the establishment or surrounding area, is detrimental to or negatively affects the character of the surrounding residential development or compromises the public health, safety or welfare; in this particular instance this sign is considered by the Traffic Engineer to be in a better spot than originally proposed, a spot which requires a lesser special exception and is certainly safer than the current sign which overhangs the sidewalk.

**SUBJECT** to the following conditions:

- The sign shall be constructed in the manner as indicated in the proponents packet
- The use of the automatic photocell as described by the proponent
- The location of the sign shall be as described in the revised request in consultation with the City Traffic Engineer, including the lesser request for a 14-foot setback.

**MOTION CARRIED 7-0.**

C. ZBA CASE: 11-15-5580  
LOCATION: 23440 Sans Souci  
PARCEL I. D.: 23-25-151-024  
REQUEST: A variance from the restriction of storage of recreational equipment or trailers over 6 feet in height in an RA-1 Zoning District to be located in the rear yard only, in order to store a recreational vehicle exceeding 6 feet in height in the front yard.  
CODE SECTION: 34-5.7  
APPLICANT/OWNER: Michael Harmer

Zoning Representative McGuire reviewed the ordinance, which prohibited any storage of recreational equipment in front yards, and prohibited recreational equipment over 6 feet tall in interior side yards. Recreational equipment over 6 feet tall could be stored in rear yards. Zoning Representative McGuire then discussed the location and presented an aerial map of the property, and photos of the trailer proposed for storage on the property taken on September 11 and September 15, which showed the trailer parked in the side and front yard. Pictures taken this morning (November 10) showed the trailer parked further back behind the fence, so that it was now in the side yard only.

Michael Harmer, 23440 Sans Souci, was present on behalf of this application. He explained that he could not place the trailer in his rear yard as there was such a steep drop off there. The placement of the trailer

as shown in the photos taken today was in the side yard, behind his house but not behind the attached garage. If he put the trailer on the other side of the home, it would sink as the ground there was a natural basin and was often flooded. There was no storage facility reasonably priced or close enough to store the trailer; he would have to travel an hour each way to use a storage facility. The location shown in the photos taken earlier today was the location where he wanted to keep the trailer. The trailer was completely behind a fence and he had a gate that he would put up at the front of the trailer.

In answer to questions from Chair Seelye, Mr. Harmer said he owned this trailer since June, 2015. It was 10'6" tall and was 32 feet long. The gate would be 6 feet tall.

Member Rich asked if the vehicle as shown was considered to be in the front yard. If so, there was a 6-foot fence in that yard. Mr. Harmer said that the current placement of the trailer placed it completely in a side yard. Member Rich noted that a variance for storage in the side yard would be a lesser variance than that requested for front yard storage.

City Attorney Morita said that they had looked at this parcel during a pre-meeting, and had determined that the north property line was actually the front yard, based on the location of San Souci and the driveway to this property. The front yard was based on the relationship of the street to the property line and not on how the house was situated on the property.

In response to a question from Member Lindquist, City Attorney Morita affirmed that the northern boundary was the front property line; this particular property was a unique situation.

Discussion followed. Past enforcement action had interpreted the front of the house to be the west side of the property, with the side yards being to the north and south of the house. If the front of the property was the north property line, the six foot fence there would also be in violation of the ordinance.

Member Lindquist asked Mr. Harmer if he had considered installing additional landscape screening along the north property line. Mr. Harmer said he had considered this and would be open to planting arbor vitae along the property line if required.

Chair Seelye opened the public hearing.

William Dygert, 23445 Sans Souci, said that he had lived in his home since 1993. He opposed granting this variance request, exactly for the reasons the ordinance prohibited side yard storage. The recreational trailer was very tall and very large, almost to the top of the garage. It would be a deterrent to the property values on the street, would be an eyesore, and he objected to its placement in the strongest possible terms.

Mr. Dygert noted reasons why there were not more opposing neighbors present. One neighbor was elderly, another had just closed on the house last week and probably did not know of this request, and other homes on the street were vacant.

Member Lindquist asked Mr. Dygert if vegetation screening would improve the situation. Mr. Dygert said that arbor vitae would take a long time to grow enough to screen the trailer, which was very tall. Additionally, Mr. Harmer had a history of past ordinance violations. The gate that Mr. Harmer had mentioned was actually just a piece of fence that he removed when he needed to; it was not a true gate. It was not practical to try to hide the trailer with arbor vitae.

Member Lindquist pointed out that with the interpretation that the north property line was the front yard, the trailer could legally be placed to the south of the house and would be much more visible. Mr. Dygert said he could not argue against any legal placement of the trailer; he opposed this variance. Additionally, the interpretation of the front and rear yard was confusing to him. Again, previous zoning enforcement by code enforcement officers had interpreted the north and south sides of the home to be side yards.

Given the interpretation presented tonight that the front yard was the north property line, Member Lindquist thought that legal placement of the trailer in the rear yard would be a worse situation for Mr. Dygert. Mr. Dygert disagreed.

After further discussion regarding the configuration of the front and side yards, Zoning Representative McGuire suggested adjourning the case, in order to verify the location of the front and side yards on this property, and in order to confirm where the trailer could be legally placed.

City Attorney Morita said this matter could be adjourned to a date certain if the proponent agreed. Mr. Harmer said he did agree with this adjournment, as he also was interested in learning what legally constituted his front and side yards.

**MOTION** by Lindquist, support Barringer, in the matter of ZBA Case 11-15-5580, to ADJOURN the consideration this case to a date certain, that being the Zoning Board of Appeals meeting of December 8, 2015, pending an interpretation from the Zoning Department regarding the areas for legal placement of the trailer.

**MOTION CARRIED 7-0**

D.     ZBA CASE:           11-15-5581  
       LOCATION:         32050 W. Thirteen Mile  
       PARCEL I. D.:     23-03-453-004  
       REQUEST:         Christmas tree sales: In order to store two temporary trailers on the lot in an RA-1 zoning district, the following variances are requested: 1. Variance is requested from the requirement that only one trailer is permitted for seasonal sales.     2. Variance from the requirement that the trailer must be of a neutral color.  
       3. Variance from the requirement the sign may not exceed 75 square feet.  
       CODE SECTION: 34-4.56.5, 34-4.56.6, 34-4.56.7  
       APPLICANT:       Pete Nemish, Nemish Diversified, L.L.C.  
       OWNER:           Woodbrooke Hills Swim Club

Zoning Representative McGuire explained that the Seasonal Outdoor Sales language in the zoning ordinance had been reviewed and changed when fireworks sales became legal in Michigan. As a result of changes in the ordinance, Pete's Christmas Trees, which had been operating in the same location for over 30 years, was now in some ways noncompliant. Specifically, the new ordinance permitted only 1 trailer of a neutral color on a site, and signs were limited to 75 square feet. Pete's Christmas Trees normally used 2 trailers, one of which was "Christmas red," and that trailer had a sign that was larger than 75 square feet.

Zoning Representative McGuire discussed the location and presented an aerial map of the property, a schematic showing the proposed location of the Christmas trees sales and the location of the proposed trailers. The sign on the red trailer was 210 square feet. The neutral colored trailer would be used for an office and living quarters while the sale was going on.

Zoning Representative McGuire noted there was a second 32 square foot sign to the front of the property; this would be allowed if this was a corner lot. However, Member Lindquist pointed out that the property in question was an interior lot. Zoning Representative McGuire advised that this second sign had no bearing on the requests before the Board; whether it would be allowed to remain would be a matter of ordinance enforcement.

In response to a question from Member Rich, City Attorney Morita explained that approvals for outdoor sales were now performed administratively, unless variances were requested, as was the case this evening.

Pete Nemish, 20285 130<sup>th</sup> Avenue, Tustin, MI, was present on behalf of this application. He explained that he had been coming to this location for 33 or 34 years. His operation remained unchanged during this time, with the same trailers and configuration as shown this evening. Due to the ordinance change, he had been put into a nonconforming situation. He was seeking a variance in order to continue with 2 trailers as he had in the past. He said that the small trailer was used for office and living space, and the large red trailer was used to haul equipment, trees, etc., and then was used to store rubbish that was cleaned and placed there throughout the selling season. Equipment necessary for this business was also stored in the trailer at night. Also, during poor weather such as freezing rain, the trees would be placed either under the trailer or inside it. All the tree sales were in front of the trailers; the trailers were only partially visible from the road.

Mr. Nemish pointed out that under the new ordinance provisions, he would be allowed one trailer and one 2400 square foot tent, and the tent did not have color restrictions. He did not want a tent, but he did need the second trailer, which was about 400 square feet. The trailer would have much less visual impact than such a tent.

In response to a question from Chair Seelye, Zoning Representative McGuire said as far as she knew no complaints had ever been made against this Christmas tree sales operation.

Mr. Nemish called the Board's attention to a letter from City Clerk Smith, which described her experience with his operation, which was that he had operated without incident or complaint during the past 30 plus years.

Referencing the schematic submitted by the applicant, Chair Seelye confirmed that the location of the trailers would be as shown.

Member Lindquist confirmed with Mr. Nemish that the swim club was completely closed during the requested period of operation.

Chair Seelye opened the public hearing. Seeing that there was no public comment, Chair Seelye closed the public hearing.

City Attorney Morita advised that a variance – if granted – would run with the land and any affirming motion should offer conditions for the use of seasonal outdoor sales, for the date and use described. However, the variance would not be limited to this particular sales operation, and the Board needed to be careful as to how the motion was crafted, including the specific dates as requested.

Mr. Nemish said he always began his sales the day after Thanksgiving and ended the day before Christmas.

After brief discussion regarding dates of use, Member Rich made the following motion:

**MOTION** by Rich, support by Vergun, in the matter of ZBA Case 11-15-5581, to GRANT the petitioner's request for 1) a variance from the requirement that only one trailer is permitted for seasonal sales and 2) a variance from the requirement that the trailer must be of a neutral color, because the petitioner did demonstrate practical difficulties exist in this case in that he set forth facts which show that:

1. Compliance with the strict letter of the ordinance would render conformity with the ordinance unnecessarily burdensome as the property is essentially completely vacant from Labor Day through Memorial Day and that is an unnecessary burden on the owner of the property that they cannot do anything else with the property if this variance is not be granted.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district. The petitioner has been operating here for 30 plus years, he has been providing a benefit to the community and to the best of the Board's knowledge, as indicated by the City Clerk, there have never been any complaints. It is a place nearby in the community where people buy their Christmas trees as opposed to being forced, in the event they do not want to, to go up north and cut down their own tree and haul it down here, so it is a benefit to the community.
3. That the petitioner's plight is due to the unique circumstances of the property. This is a temporary sales event that the property does not support by having facilities available in order to have sales of this sort. If there was sufficient storage space there may not be the need to have a second trailer. The property itself is not configured to allow for this type of use.
4. That problem is not self-created as the ordinances were changed and that is the only reason why the applicant is seeking the variances.

**SUBJECT** to the following conditions:

- The applicant shall comply with all other provisions of the ordinances regarding seasonal outdoor sales.
- The sales, with respect to Christmas trees, shall be the use that is permitted.
- The trailers shall be of the same size and color as indicated in the application.
- The signage be specifically as represented, in terms of size and color.
- The trailers shall be placed as depicted in the diagram submitted.
- The sales shall be allowed from the day following Thanksgiving through Christmas Day, December 25.

**MOTION CARRIED 7-0.**

**DISCUSSION ITEM:**

- A. ZBA CASE: 10-15-5571  
LOCATION: 38325 Fourteen Mile  
PARCEL I.D.: 23-06-200-015  
REQUEST: In order to retain a dumpster enclosure in an RP-2 zoning district, the following variance is requested: (1) **18 foot variance** to the required 20 feet from any residential property line or district.  
CODE SECION: 34-5.1.3.D.iii.  
APPLICANT/OWNER: Al Falah Institute

Zoning Representative McGuire referred to her memo of November 10, 2015 regarding the above case, which was heard on October 13, 2015. The memo specifically referenced the first condition of the approving motion which read:

“The proponent shall be required to plant screening of an evergreen variety in cooperation with City staff, for acceptable plants that are tall enough to obscure the dumpster enclosure at an estimated height of 10 feet but to be determined by City staff by line of sight whether or not the enclosure would be visible from the windows of the adjacent properties.”

Zoning Representative McGuire said that as explained in her November 10 memo, the proponent had met with City staff, and was proposing to plant two 10' trees of an evergreen variety to the south of the dumpster. The proponent was willing to plant trees to the west of the dumpster but City Staff was concerned that this planting would require the removal of existing hardwoods and other growth in that area, thus making the screening situation worse. Additionally, because the western side was shaded, there was concern that evergreen trees would not thrive in that location. Last, the corner of the dumpster closest to the residential property line did not have enough room to plant trees, and would likely always be visible.

Zoning Representative McGuire explained that staff did not want to approve something without asking the Board if planting the two trees south of the dumpster met the intent of the motion. The applicant was willing to plant the trees west of the dumpster, but again there was a concern that the situation would be worse if he did this. Staff was suggesting planting the two trees south of the dumpster and leaving open the requirement to plant evergreens to the west, based on how the southern trees matured and grew, and how the existing plantings to the west thickened over time. Again, removing the existing plantings and then planting trees that might not thrive in that location (west) could make the situation worse. However, it should be acknowledged that the existing plantings were not green year-round.

Member Lindquist requested an overhead view of this site and Zoning Representative McGuire distributed a schematic of the area as shown on the approved site plan.

Member Lindquist, who made the original motion, reviewed his intent to screen the dumpster as completely as possible.

Discussion followed. The difficulty of planting trees that would actually grow on the west side was balanced against the need for screening to the west. Zoning Representative McGuire emphasized that staff and the proponent would follow direction from the Board, as best as they were able.

In response to a question from Chair Seelye, City Attorney Morita explained that the City had brought this item back to the board because their understanding of the intent behind the original motion was to provide as much screening as possible and to obscure the enclosure. When staff looked at the site they realized that in order to effectuate the screening with evergreens, the new plantings might end up defeating the purpose of having the evergreens put in. What the City would like was a consensus of the board as to whether or not it was really the intent of the motion to cause a removal of all the hardwoods in the area for the plantings of the evergreens or was it more the intent of the motion to provide as much screening as possible with just the planting of the evergreens to the south of the enclosure and thus leave the hardwoods in place. Evergreens needed sun to grow. In order to get the evergreens to grow on the west side of the enclosure the applicant would end up cutting back a lot more of the existing growth and this might defeat the purpose behind the evergreens going in in the first place.

Member Rich said he thought the intent was to provide the maximum screening possible and the best way to do that was left to the discretion of landscape experts on staff. If staff was saying there was danger in removing the existing plantings to the west, then in his view it was best to not remove the plantings there.

Member Lindquist said he had hoped for year round screening. However, he was not an arborist and he would leave it to the applicant and staff to provide the best screening possible. He was willing to rely on the recommendations of staff as to the most practical and effective way of screening the dumpster enclosure. Perhaps trees other than evergreen could be planted.

Zoning Representative McGuire said the plan brought to the City by the mosque was to plant the two trees to the south and then, if necessary, to plant trees to the west by spring of 2017. This gave them time to see how the trees to the south would do, and if that planting was adequate.

In response to further comments from Member Lindquist, City Attorney Morita said that the City could not compel a property owner to plant trees on property other than their own.

#### **APPROVAL OF OCTOBER 13, 2015 MINUTES**

**MOTION** by Rich, support by Masood, to approve the Zoning Board of Appeals meeting minutes of October 13, 2015, as submitted.

**MOTION CARRIED 7-0**

#### **PUBLIC QUESTIONS AND COMMENTS**

There were no public comments.

#### **PROPOSED 2016 ZONING BOARD OF APPEALS MEETING SCHEDULE**

After discussion, it was decided to postpone this item to the December meeting. March, October and November meetings were all problematic due to election and religious conflicts.

Chair Seelye reminded the Board that there was a ZBA training scheduled for November 12, 5:30 p.m. at the Attorneys' offices.

#### **ADJOURNMENT**

**MOTION** by Rich, support by Barringer, to adjourn the meeting at 10:25p.m.

**MOTION CARRIED 7-0**

Respectfully submitted,

James Stevens, Secretary  
Zoning Board of Appeals

/ceh/cem