

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
JANUARY 8, 2019**

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: **Barnette, King, Lindquist, Masood, Rich, Seelye, Vergun**

Members Absent: **None**

Others Present: **Attorney Morita and Zoning Division Representative Grenanco**

SITE VISIT JANUARY 6, 2018

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

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, 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 Barnette, to approve the agenda as published.

MOTION CARRIED 7-0.

NEW BUSINESS

A. ZBA CASE: 1-19-5647
 LOCATION: 27777 Inkster
 PARCEL I.D.: 23-13-401-003
 REQUEST: In an OS-1 Zoning District, 1. A special exception for a third sign on the South side building façade (maximum two signs allowed). 2. A special exception to allow for an additional 25 square feet of sign, for a total of 75 square feet of wall signage (maximum allowed 50 square feet of signage per façade).
 CODE SECTION: 34-5.5.3.B.i.; B.ii.
 APPLICANT: Centria Healthcare, L.L.C.
 OWNER: 27777 Acquisition, L.L.C.

Utilizing overhead slides, Zoning Division Representative Grenanco gave the background for this application for two special exceptions as advertised, for the property located at 27777 Inkster. Zoning Division Representative Grenanco explained that this request had been granted in July 2017. However, the applicants did not build the requested sign in the allowed time period and their special exception had lapsed, and they were therefore making their request again this evening.

Zoning Division Representative Grenanco said the subject site was a large parcel located on the west side of Inkster Road just north of 11 Mile Road. The applicants were seeking a 3rd sign on the south building façade.

Rebecca Godin, Phillips Sign & Lighting, 40920 Executive Drive, Harrison Township, MI, was present on behalf of this application, as was Andy Gutman, 27777 Acquisition, LLC.

Ms. Godin said they were seeking a 3rd sign, 25 square feet in size, as had previously been approved in July 2017. Centria Healthcare needed the sign so they would have visibility on I-696.

In response to a question from Chair Seelye, Ms. Godin said the original EWI sign was 25 square feet per the July 11, 2017 minutes. They were asking for a sign the same size.

Member Rich noted that in July 2017 the owner was listed as 27777 Property, L.L.C. Tonight the owner was 27777 Acquisition, LLC. Had ownership changed? Mr. Gutman said the applicant and owner were the same as in 2017. Both L.L.C.'s were in the same chain of ownership.

Member Rich observed that if the third sign were approved, there was still a fourth tower with no signage on it. Did the applicants intend to return to the ZBA to seek approval for another special exception when a fourth tenant was found for the building? Mr. Gutman said Centria Healthcare, L.L.C. completed the occupancy of the building. There would be no need for any further signage, unless someone moved out.

Seeing that discussion had ended, Chair Seelye opened the public hearing. As no one came forward to speak, Chair Seelye closed the public hearing and brought the matter back to the Commission.

Member Lindquist said there was an affidavit of mailing, with one return.

MOTION by Rich, support by Barnette, in the matter of ZBA Case 1-19-5647, to GRANT the petitioner's request for a special exception for a third sign on the South side building façade and a special exception to allow for an additional 25 square feet of sign, total 75 square feet of wall signage, in an OS-1 Zoning District, in that the petitioner did set forth facts which showed:

- i. That the request is based on circumstances or features that are exceptional or unique to the property and that are not self-created, specifically the very large size of both the property and the structure, as well as its location along an interstate highway;
- ii. That failure to grant relief would result in substantially more than mere inconvenience or financial expenditures;
- iii. That the application of the regulations in this section without the special exceptions will unreasonably preclude the visibility or identification of a non-residential building on the property;
- iv. That the special exceptions will not result in a sign or condition that is incompatible with or unreasonably interferes with adjacent or surrounding properties, will result in substantial justice being done to both the applicant and adjacent or surrounding properties, and is not inconsistent with the spirit and intent of this chapter; and
- v. When taken on its own, or in combination with other existing conditions on the property or in the area, the special exceptions 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 surrounding residential development, or compromises the public health, safety or welfare.

With the following conditions:

1. The signs must be placed as indicated.
2. Each sign must be of the size and layout indicated.
3. Each sign must be consistent with the submitted materials in terms of lighting and overall appearance.
4. The motion releases the owner of the property from the restriction that with the monument sign placed along the freeway, no façade signs be added (Condition of variance granted November 12, 2002).
5. If the building were to fall under occupancy of a single tenant, it will revert back to two façade signs, up to a maximum of 50 square feet per façade.

MOTION CARRIED 6-1 (Lindquist opposed).

B. ZBA CASE: 1-19-5648
LOCATION: 31690 W. Twelve Mile
PARCEL I.D.: 23-10-476-038
REQUEST: An interpretation that the lab use is accessory to the main office use in an OS-1 Zoning District or an interpretation that the principal use is as an office with an accessory lab use.
CODE SECTION: 34-2.2; 34-3.1.19
APPLICANT: RHB Laboratories (Raheel Ahmad)
OWNER: JHN Investments, L.L.C.

Utilizing overhead slides, Zoning Division Representative Grenanco gave the background for this request for an interpretation that the lab use was accessory to the main office use in an OS-1 Zoning District, or an interpretation that the principal use is as an office with an accessory lab use.

Zoning Division Representative Grenanco explained that the property was located in an OS-1 District, on the north side of 12 Mile Road just east of Park Hill Boulevard and west of Orchard Lake Road. The property directly bordered a residential area. The purpose of the OS-1 District was to serve as a buffer to residential areas.

The City Planner had denied a re-occupancy application for a laboratory as a principal use, as this was not a permitted use in the OS-1 zoning district. Medical laboratories were permitted as a special approval in the OS-4 Office Research District, and as a principal permitted use in the IRO Industrial Research Office and LI-1 Light Industrial districts.

The applicants were here this evening to request an interpretation that their requested use was for office as a primary use, with the laboratory as an accessory use to the primary office use.

Yasir Muhammad, Kitch Attorneys & Counselors, One Woodward Avenue, Suite 2400, Detroit MI, was present on behalf of this application. Also present were: Raheel Ahmad, RHB Laboratories, 25415 Southfield Road, Southfield, MI; Kevin Jappaya, KJ Commercial Real Estate Advisors, 30201 Orchard Lake Road, Suite 100, Farmington Hills; and Brad Margolis, NAI Farbman, 28400 Northwestern Highway, Fourth Floor, Southfield MI 48034.

Mr. Muhammad explained that they felt the laboratory portion of the proposed use was accessory to the main use, which was office. Farmington Hills Zoning Ordinance defined accessory use as:

...clearly incidental to, customarily found in connection with and, unless otherwise specified, located on the same zoning lot as the principal use...

Mr. Muhammad said the use would be primarily office, with about 24 full time office staff. Four other staff members would operate 3 machines that tested urine samples and swabs. The machines themselves could fit in a small area, less than 1000 square feet if needed.

Mr. Muhammad compared the proposed use to an office that had 3 large printers. The printers would be incidental to the office use. In tonight's case, the majority of the space as well as the majority of the employees would be dedicated to office use. The lab would perform minimal testing of swabs and urine samples. This was not a laboratory in the traditional sense, and would have no impact on the abutting residential area. Regarding economic impact, RHB Laboratories had been looking for over a year for a place to locate in Farmington Hills. Upon investigating other locations in Farmington Hills, RHB was unable to locate any alternate locations that would be suitable for RHB's needs and purposes. The proposed building was industrial in design, and most offices could not fit into the building.

Mr. Margolis said NAI Farbman had been marketing this property for about 3 years. It had been very challenging to find a user who fit the current layout of the building. The building was originally built with a more industrial design. For example, a large portion of the office building in the rear was only accessible by stairs; there was no elevator, no electrical way to install an elevator, and no real entrance to that area. The only way to access that portion of the building was to go through the front or the back. The layout was only set up for a single user to take over the building. While there had been interest in a partial use of the building, the owner was unable to sell to someone who only wanted a portion.

Mr. Margolis said the applicants were a good fit for the building. They would not affect neighboring residential uses. The building owner adjacent to this property had no issue with the proposed use. The laboratory use would be invisible from the exterior. Currently the property was heavily under-utilized; the owner was using only 1/3 of the building.

Mr. Jappaya said he was the broker for the potential purchaser. He had been working for about 1-1/2 years looking at properties for RHB Laboratories. It had been difficult to find available properties both in Farmington Hills and elsewhere. The current site worked well for the proposed use; the laboratory itself was only a small portion of the building, and the use would be in harmony with the neighborhood.

Mr. Ahmad reiterated that they had been looking for 1-1/2 years, and felt they had found the perfect building in the subject site. Originally the building had housed a printing press and was now an architect's office. They would like to bring their business to Farmington Hills.

Mr. Jappaya added that the portion of the building that would house the laboratory was already there; not much would be required in terms of infrastructure, etc., especially as that portion was adjacent to the garage, which could be used for storage.

Mr. Muhammad reiterated that there would only be 3 machines that would be used for testing; the rest of the building would be utilized by office staff.

In response to questions from Chair Seelye, Mr. Ahmad said the hours of operation would be Monday through Friday 7:00 a.m. to 3:00 p.m., and Saturday from 9:00 a.m. to 2:00 p.m. They received one delivery per day via UPS. They also had 3 drivers who picked up specimens to be tested and returned to the office between 8:00-9:00 p.m. The layout showed the garage/storage area on the far north of the

building, with the laboratory directly south of that. Those uses could also be switched if necessary. There were no plans to expand the laboratory into the garage/storage area. Waste was picked up and disposed of by a separate company; it was held inside the building until it was picked up.

In response to questions from Member Lindquist, Mr. Ahmad further described the process of bringing samples to the site. Local drivers brought samples in sealed bags from local physicians' offices; those were refrigerated overnight. Samples from other states were delivered by UPS. The urine samples and swabs were stored for 2 weeks. Nothing biohazardous was tested or stored. The 24 members of the office staff did not work in the lab. RHB was allowed to be adjacent to residential in Southfield.

Member Masood asked if clinics were allowed in OS-1 zoning districts. City Attorney Morita said that medical offices were permitted but laboratories were not. A laboratory was defined as Webster's dictionary would define it:

Definition of laboratory: 1a: a place equipped for experimental study in a science or for testing and analysis. Broadly: a place providing opportunity for experimentation, observation, or practice in a field of study

Ms. Morita referenced the definitions of principal use and accessory use in the zoning ordinance:

***Principal use** means the main use to which the premises are devoted and the main purpose for which the premises exist.*

***Accessory use or accessory** means a use which is clearly incidental to, customarily found in connection with and, unless otherwise specified, located on the same zoning lot as the principal use to which it is related. When "accessory" is used in this text, it shall have the same meaning as accessory use.*

A list of examples of what would be considered accessory uses was also included in the definition.

Ms. Morita emphasized that the question tonight was whether or not the laboratory or the office was the principal use in this instance.

Chair Seelye felt that without the laboratory, RHB Laboratories didn't exist. It seemed to him the laboratory was the main part of the business.

Mr. Ahmad pointed out that 80% of the building would be used for office space for their headquarters. He affirmed this would be the primary use.

Mr. Muhammad repeated his analogy of printers being accessory to the use of office space such as a law office. Without printers, the law firm would not exist. The machines used for testing operated in the same way – accessory to the use. They were *clearly incidental to* the main use. Under the current circumstances, the sales staff, etc., would use the office space. The laboratory machines could be at a different building, similar to how printers could be located separately, or even an office could use Kinko's, etc. However, for a successful business, RBH Laboratories preferred the laboratory machines to be under the same roof.

In response to questions from Member Lindquist, Mr. Ahmad said that no in-person samples were taken at the facility. They could offer a draw station but they chose not to do that. While they had offices in other states, this was the only laboratory the company used.

Member Lindquist said that the name of the business was called RHB *Laboratories*. Despite Mr. Muhammad's analogy, Member Lindquist could not see how the office work, including sales, billing, staff answering questions, etc., was anything but ancillary to the main business of processing laboratory samples. This was a laboratory that had office workers working inside the same building. The fact that the office staff took up more space than the laboratory machines that were required to do the sampling was of no consequence, nor was the fact that the machines could be operated by 3 or 4 people whereas there were a larger number of people who had to handle the clerical work and sales, etc. Therefore, Member Lindquist would be unable to determine this was an office use which used a laboratory as accessory to that use.

Member Rich said the distinction between the analogy of a law office use with printers vs. the proposed use was: If the primary use was a law or other type of office, printers would have to be used. However, 99% of businesses whose primary use was office, clerical and/or storage did not have a lab testing facility as an accessory use. The definition of an accessory use included *customarily found in connection with . . . the principal use to which it is related*.

Member Rich said he personally didn't have a problem with the concept of this business at this location. He didn't think the use would be obtrusive in the neighborhood. Still, with the legal definitions that had to be applied he could not in good conscience say the laboratory facility met the definition of accessory use.

Member King said that in addition to office, an approved primary use for the OS-1 district was for medical clinics. Every medical office/clinic had a laboratory facility of some sort in them. Beyond that, as the Board tried to apply the code for the good of the community, if this was a clinic there would be much more traffic coming and going on a regular basis. The same types of bodily fluids would be handled and processed in a medical clinic. While he was sensitive to the argument about the letter of the law, the purpose of the Board was to make a reasonable, rational interpretation of a request that didn't exactly fit the letter of the law. He would support this request.

Chair Seelye opened the public hearing.

Allan Whittemore, 28320 Grand Duke Drive, asked what zoning classification would allow a laboratory. He agreed with Member King and supported this request.

City Attorney Morita said the IRO and LI-1 Districts allowed laboratories, along with the OS-4 District.

City Attorney Morita referenced the definition of Clinic in the zoning ordinance:

Clinic means an establishment where human patients who are not lodged overnight are admitted for examination and treatment by a group of physicians, dentists or similar professions.

City Attorney Morita said it was up to the Board to make the determination as to whether or not there was the necessary examination and treatment going on to meet the definition of a medical clinic.

Seeing that no one else came forward to speak, Chair Seelye brought the matter back to the Board for further discussion or a motion.

Member Lindquist noted there was an affidavit of mailing, with 15 returns.

Member Masood said he agreed with Member King. He pointed out that as advertised, the question tonight was for an interpretation that the lab use was accessory to the main office use.

Member Vergun said that tonight the Board needed to find if the original basis of the ordinance would allow the laboratory to be a secondary use. He agreed that the definition of a clinic required human patients to be served at the location, which was not the case here. While the majority of the building would be used for non-laboratory uses, the fact that there were 24 clerical employees – it could just as well be 10, 30, 15, or 20 – the number of employees did not determine the primary use.

MOTION by Lindquist, support by Rich, in the matter of ZBA Case 1-19-5648, that the determination of the City Planner be AFFIRMED in that the City Planner's interpretation of Sections 34-2.2; 34-3.1.19 of the Farmington Hills Zoning Ordinance is correct, in that the principal use of the facility is a laboratory with the office as an accessory use.

Further, it is clear that this facility is a laboratory facility aggregating samples from 3 or more states. Nothing under the definition of a clinic is occurring at the facility, except that the use is medically-oriented. There is no treatment of patients and there are no visits of patients to the facility in its intended use. There is no interpretation that can be found that this is an office facility that just happens to have a laboratory co-located.

Member King said that if the Board looked at the use on a percentage of square footage allocation, less than 25% of the facility would be utilized as a laboratory. Over 75% of the facility would be used for something that would meet the description of office space. While this was a business that did laboratory analysis, he felt the facility was primarily for office use, and secondarily for laboratory use.

Member Barnette said that regarding the definition of a clinic, while the patients were not in this facility, the testing was done on behalf of patients being seen elsewhere. It seemed to him that the description of a clinic was actually met. He would support this application. Also, if there was not another facility that would fulfill their needs, was the Board keeping RHB Laboratories from operating in the City by denying this application?

Member Lindquist thought there must be many locations where a laboratory could operate as a permitted use within the Farmington Hills zoning districts listed earlier. Also, the applicants could continue to operate in their current location. The Board's charge was to determine whether the City Planner's interpretation was right or wrong: whether his interpretation that this was a laboratory with ancillary office was correct, or whether it should be interpreted as an office that happened to have a laboratory attached to it. In Member Lindquist's opinion, the square footage was irrelevant. The main business was not an office or claims processing; the main business was as named: RHB *Laboratories*. This was plainly and clearly a laboratory operation. Again, Member Lindquist believed the City Planner's interpretation was correct.

Chair Seelye called the motion.

Motion carried 4-3 (Barnette, King, Masood opposed).

PUBLIC QUESTIONS AND COMMENTS

There were no public questions or comments.

APPROVAL OF NOVEMBER 13, 2018 MINUTES

MOTION by Rich, support by Masood, to approve the Zoning Board of Appeals meeting minutes of November 13, 2018.

MOTION CARRIED 7-0.

ADJOURNMENT

MOTION by Masood, support by Barnette, to adjourn the meeting at 8:27 p.m.

MOTION CARRIED 7-0.

Respectfully submitted,
Erik Lindquist, Secretary

/cem