

MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
OCTOBER 13, 2015

CALL MEETING TO ORDER

Chair Seelye called the meeting to order at 7:32 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, Rich, Seelye, Stevens and Vergun

Members Absent: None

Others Present: Attorney Morita and Zoning Division Representative McGuire

SITE VISIT OCTOBER 11, 2015

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

Member Rich said that he would like to add under Old Business a motion for reconsideration regarding Case 9-15-5565.

Zoning Representative McGuire explained that this case had been heard at the September 2015 meeting. At that time the ZBA had required that the proponent come before the board every year in order to renew a permission for a monthly 4-hour outdoor sales event. This motion would reconsider the condition of the yearly permission.

City Attorney Morita further explained that the motion to reconsider had to be offered by someone who voted in favor of the original motion, it would have to be seconded, and then the ZBA would vote on the motion to reconsider. If there were enough votes in favor of the reconsideration then the maker of the motion for reconsideration should make a motion as to what that reconsideration should be. That motion would then be seconded and a vote would be taken on that motion.

MOTION by Rich, support by Lindquist, to approve the agenda with the addition of the Reconsideration of ZBA Case 9-15-5565 to be heard under Old Business.

Member Masood noted that he had been absent in September. City Attorney Morita explained that he could still vote on tonight's discussion of the case.

MOTION CARRIED 6-0-1 (Masood abstained)

Zoning Representative McGuire said there were no other changes to the agenda.

OLD BUSINESS

- A. ZBA CASE: 9-15-5565
LOCATION: 32905 Northwestern Highway
PARCEL I.D.: 23-02-102-013
REQUEST: Permission for a temporary outdoor sales event in a B-3, P-1, RA-1 zoning district, which is not accessory to the principal use and not conducted by the owner or operator of the principal use. (Previously granted on August 12, 2014 for one year)
CODE SECTION: 34-7.14.6.E.
APPLICANT: Jon Gebarowski for Oceanside Seafood, Inc.
OWNER: Michael Langan

MOTION by Rich, support by Lindquist, to reconsider ZBA Case 9-15-5565.

MOTION CARRIED 6-0-1 (Masood abstained).

Member Rich explained that the motion would change the condition calling for a 12 month permission. The ZBA's understanding at the time of the original motion was that they had to require the applicant to come before the Board every 12 months. Following analysis by City staff as well as the City Attorney that was not a requirement and there were other alternatives with respect to the specific facts of this case. Therefore, he offered the following motion:

MOTION by Rich, support by Lindquist, in the matter of ZBA Case 9-15-5565, to AMEND the condition to be as follows: This permission is for 12 months, the applicant may re-apply administratively every twelve months for an additional 12 month permission on days and times approved by staff provided no violations or complaints occur, there are no changes in land-use in the immediate area and there are no other material changes to the property or surrounding properties as determined by staff. The applicant may re-apply administratively for 4 additional 12 month periods.

MOTION CARRIED 7-0.

NEW BUSINESS:

- 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 SECTION: 34-5.1.3.D.iii.
APPLICANT/OWNER: Al Falah Institute

Zoning Representative McGuire discussed the location and presented an aerial map of the property, photos of the dumpster in question as well as a description of the recent improvements made to the property as a result of site plans approved by the City. She pointed out the location of the dumpster, which was 2 feet from a residential property line. The site plan, which had been reviewed by City consultants Clearzoning and approved by the Planning Department, clearly showed the dumpster in its present location, where the property line made a 20 foot jag so that what had perhaps appeared as a 22 foot setback was only a 2 foot setback. The Institute was now requesting a variance for the 2 foot setback.

Kevin Coles, 41200 Coventry, Novi, MI, attorney for the Al Falah Institute, was present on behalf of this application. Chester Stempien, architect for the project, 29895 Greenfield, was also present.

Mr. Coles explained that this was an exceptional case with extraordinary circumstances. The dumpster enclosure as depicted on the screen was approved by the City's Planning Department, the site plan was approved, the construction plans were approved, all showing the dumpster in its existing location. That location was then improved with the dumpster enclosure. A year later the Al Falah Institute was informed that it was too close to the property line. It was generally their view that based on the City's approvals the dumpster was a lawful dumpster enclosure. If for any reason the City should determine this evening that it was not a lawful structure, it was their view that the dumpster enclosure would then be a valid nonconforming structure. Those legal arguments being said, the reality was they had processed this plan in good faith, followed all the rules of the City, built the development in accordance with the rules of the City, without any collusion. The structure had been obvious and apparent on every plan submitted to the City. Substantial sums of money had been spent constructing the enclosure, and even more substantial sums of money would be spent if they were required to relocate the structure. As Mr. Stempien, the architect for the project, would explain, the relocation of the structure would not be in the public interest because the structure would be moved closer to the homes. A conforming location would result in the structure being dozens of feet closer to the homes to the south. They asked that the ZBA reverse the decision of the code enforcement officer, grant approval for the structure to continue in the current location, and issue any required variance. Substantial justice would be done by keeping the enclosure in its present location and not requiring the Al Falah Institute to spend in the range of \$24,000 to relocate it. This was an estimate they had obtained from their contractor for relocation costs.

Mr. Coles also pointed out that in the picture shown on the overhead, the fence was not on the property line. The fence was 20 feet from the property line. The 2 foot distance from the property line was at the back end of the enclosure where the residential property came up and had its terminus. The property of the Al Falah Institute extended 20 feet west of the fence and it was just at the back corner at which there was the 2 foot proximity.

In response to a question from Chair Seelye, Mr. Cole said the dumpster was 2 feet from the residential property line on a corner-to-corner basis. The dumpster enclosure was 80 feet from the home most affected. If they moved the enclosure to a conforming location, it would be 55 feet from that home, which could not serve the public interest.

Mr. Stempien explained that this had been a KinderCare Center that was purchased by the Al Falah Institute. The footprint of the building remained the same. Modifications were made to the parking because of the need for more parking facilities based on the current use. The only structure added to the project was the dumpster. There were several meetings with the Planning Department and people concerned about buffering the residents from this project. Significant additional landscaping was added to the south end, even though there was a row of arbor vitae on private property that also screened this project. It was suggested in the course of laying out this plan that the dumpster be placed closer to the wetlands than to the east where it would have been more visible to residents in the southeast corner and to the residents on the east side.

Mr. Stempien passed around an engineering plan, pointing out the relationship of the wetlands to the property.

Chair Seelye affirmed that the location of the dumpster was approved by the Planning Department, as he had been so informed by the City. The location close to the property line had slipped through the cracks.

Mr. Stempien agreed. He pointed out how easily the proximity of the residential property could be overlooked.

In response to a question from Member Vergun, Mr. Stempien said the engineering plan was approved by the City, showing topographical detail, etc.

Member Vergun pointed out that 100% of the dumpster enclosure was along the residential property, according to the picture shown. Mr. Stempien said that the dumpster was actually abutting the wetlands.

Member Lindquist said the engineering drawing did show the dumpster location as slightly different than the plans in the Members' packets in that the dumpster was moved somewhat north than the original location.

Mr. Stempien said the Engineering Plan was the final plan used, as this was the plan that engineered the location of parking spaces, etc.

Member Lindquist pointed out that the dumpster was in a less offensive position than that approved on the original site plan.

Mr. Stempien agreed, though the dumpster enclosure was still in violation as one corner of the residential property line was very close to a corner of the dumpster. Mr. Coles further explained that as Al Falah moved through the approval process, the dumpster enclosure was shifted north about 10 feet.

Member Lindquist asked that if the Zoning department was able to inform the Board of a location within the envelope that met the setback requirements, was the proponent prepared to construct a new dumpster enclosure in an alternate location?

Mr. Coles said that they would definitely prefer not to relocate. The Al Falah Institute was a nonprofit religious organization and dollars were important. They had already spent substantial monies building the dumpster enclosure in its present location and it would cost about \$24,500 to remove the dumpster enclosure and install a new one in a conforming location. Also, the plan that Mr. Stempien had just circulated showed a conforming location for the dumpster enclosure, along with the existing location. There were a variety of conforming locations, as these just had to be 20 feet from a property line. But the conforming location shown was around 55 feet from the objecting neighbor's house. The existing dumpster location was 82 feet. They submitted that it would be contrary to the public interest to order this dumpster enclosure moved, in light of the unique facts of this case, the extraordinary circumstances of their reliance on the City's approval in good faith, and it would be contrary to the public interest to order that the dumpster be relocated to a conforming location, which location would probably be that colored in yellow orange on the plan just distributed.

Noting the estimate was \$24,000 to construct a new enclosure, Member Lindquist asked the price paid for the construction of the original enclosure.

Mr. Coles said he did not get a specific price for that. The price of a new enclosure would include removal of the old, so it would be more expensive than the one they had.

Member Rich asked staff if the issue of the proximity to a residential property line was only if that particular structure was used to enclose a dumpster. If they used the structure for something other than a dumpster, then would that still be a violation of Ordinance? Zoning Representative McGuire said that she would check the ordinance for side yard setback requirements in this zoning district.

Member Rich confirmed that the structure had actually been moved to the north about 10 feet from the location on the original plans.

Mr. Cole said the structure had been shown in a variety of plans but the approved site plan showed the dumpster in the current location as built. On his copy of the approved site plan and the approved construction drawings, it was shown where it was built.

Member Rich asked if it was moved 10 feet to the north from where it was shown on the original engineering plans as opposed to the building plans and it was currently 2 feet from the property line, that would seem to indicate that it would have been 8 feet onto the actual residential property before it was moved 10 feet to the north.

Mr. Cole said actually it would be a 2 foot dimension and if they looked at the photo that was displayed (showing the rear of the dumpster) he could explain this further. The fence that was shown at the rear of the dumpster was along the property line. So if the dumpster was moved back 10 feet it would still be on Al Falah property and there would be a 2 foot setback along the entire dumpster instead of just at the southwest corner. The dumpster would never be on the adjoining property's land.

Member Masood asked if there was any precedence for cases like this one, where the City has approved a plan, a structure was built, and 2 years after the fact the ZBA was now hearing the case.

City Attorney Morita said that overall such cases were not as unusual as she would like. However, this case was very unusual for the City of Farmington Hills. In the 12-13 years she had been working with the ZBA, this was the first time they had heard a case like this. However, there was case law where there had been situations where plans had been approved, site plans had been approved, construction had started, and then, for example, someone realized a structure was too close to a property line and the building needed to be removed. Depending on the value and the cost of the structure that was being removed; depending on where the actual construction was – whether it had been completed or just started – those were all factors that the courts had weighed in determining whether or not, if the decision of the community was challenged, that structure or building should be moved or should be allowed to remain. It was a balancing act the Board had to play tonight in that this was something the City had approved. The plans had gone through several levels of review, including the Planning Department, the work had been completed and the structure had been there for a while, and if the structure had to be removed the entire structure would essentially have to be destroyed. When the Board looked at this, it was important to consider the cost of having to rebuild the enclosure, consider what would have to be destroyed, and the inconvenience to the property owner. But also the Board had to weigh everything they would normally weigh for a non-use variance.

Member Masood asked if City Attorney Morita felt that this question fell within the jurisdiction of the ZBA. City Attorney Morita said it did fall within the Board's jurisdiction. The application was asking for a variance and this was something only the ZBA could grant.

Referring to the memo from City Planner Mark Stec dated 9/16/15, Member Stevens asked what “as far as practicable” meant in the ordinance:

“Per Section 34-5.1.3.D.iii, Dumpsters and their screening enclosures shall be located *as far as practicable* from any residential district or use and shall in no instance be located within twenty (20) feet of any residential property line or district.”

Member Stevens continued that upon the drawing that the petitioner just distributed, an alternate location of the dumpster was shown that met the 20 foot requirement. This met one criteria of that statement but *as far as practicable* could include other locations. How was that statement in the ordinance enforced? Was that a judgment call from staff? It looked like there were a lot of other locations on the plan that would be a lot further than the alternative location that they showed.

Zoning Representative McGuire said that the enforcements she knew about all addressed the specific 20 foot requirement.

City Attorney Morita added, in terms of ordinance interpretation, when staff was looking at dumpster locations they were taking into consideration a lot of other things. In this particular case, during review it was mentioned to her that one of the reasons that particular location was chosen was because it was an easy in and out for a trash hauler. For instance, it was not necessarily practical to have the dumpster in between two parking areas or in a landscaped area where a trash hauler would have to make a tight turn and back in and out, with the attendant beeping that accompanied that activity. It was easier and quieter to have someone pull straight in, dump the dumpster, and then pull out. So there were other considerations in terms of traffic flow, lighting, etc. that the ordinance addressed.

Member Stevens asked if the Planning Department knew what an acceptable alternative location would be if the variance were denied this evening.

Zoning Representative McGuire said that City Planner Stec and representatives of the Institute had been in conversation about different locations; she had not been privy to those discussions. The ultimate choice had been for the Institute to seek to keep the present location.

Member Stevens asked the applicant if this location was the preferred one or were other locations discussed?

Mr. Stempien said the plan he had handed out this evening provided one location. There were an infinite variety of locations that met the 20 feet requirement. The plan provided was an illustration of a location that would work from a practical standpoint for garbage trucks but would obviously have consequences for the neighbors. This same situation ran across the entire back property of the Institute.

Imam Sohail Mangera, 7838 Watford Drive, West Bloomfield, MI and President of the Institute, explained that they had tried to use every inch of the property to get as much parking as they could so that they could make it as convenient for people to get in and out and so that they did not disturb the neighbors. The only area that would allow relocation would be the back property line. Moving it back to that property line would move it closer to the neighbors there. They had tried before to move the enclosure to different places; the current location was felt by the architect to be the most convenient in terms of the garbage truck coming in and out and being less of a nuisance to the neighbors as possible.

Mr. Coles said that he saw alternative grounds for the Board: They could view this request as a review of the Code Enforcement Officer's ticket and reverse the ticket based on the prior approvals and the determination of the City that this dumpster location was lawful. The Board could also grant a variance and do substantial justice without doing any detriment to the adjoining; in fact it would be less detrimental than the alternative location. He emphasized that the Al Falah Institute had worked very hard to be a good neighbor. They worked to keep the dumpster enclosure clean. There had been one complaint that was some time ago and they had been ever more vigilant to make sure that everything was in its proper place on and around their property. The Board had in their file a letter from an adjoining neighbor that said just that – they the Institute was better at taking care of the property than the prior owner. Al Falah had been a

good citizen. It had complied with all the Planning Department's requests regarding this property. Now they were faced with this intractable dilemma and they asked for the Board's favorable review.

At this time, Chair Seelye opened the Public Hearing.

Arfaat Khan, 32586 Woodvale, Farmington Hills, MI., gave some history to Imam Mangera, who had been president of the Tawheed Center in Farmington Hills, and now was president of the Al Falah Institute. He explained that Imam Mangera had done excellent work with members of their community who were involved in substance abuse issues, and the services the Institute were offering were exemplary. He was in favor of granting the variance request.

Isaac Zolotarev, 38430 Lowell Drive, Farmington Hills, MI said that he had lived in his home for 24 years. It was his property that was to the west. The back of the dumpster and probably about 1.5 to 2 feet of the side of the dumpster bordered their property. They had first talked to City Planner Stec on June 18, 2014, and he had assured them everything was being built according to the proper rules. At that time they did not know about the 20 foot requirement for dumpster locations. They had found out later and had been talking to Staff Planner Stec and the Zoning Department. From their perspective the enclosure had a huge effect on the neighborhood and on their property particularly. The enclosure was clearly visible from their deck, kitchen, and family room. He distributed some photos that showed its visibility today when the leaves were still on the trees. When the leaves did fall, it would be a wide-open view. The Board had a letter from the Zolotarevs in their packet that spelled out their concerns. In addition to the fact that this was wide open and visible, on warm summer days he could smell the dumpster. Not always – but occasionally on hot days you could smell it. There was a good reason why the requirement of 20 feet was in place. While he was sure it was not by any intent, the trash sometimes got blown over onto their property because it was so close. He believed due diligence was not done when the property was developed. When Kindercare was in place there was no dumpster next to them. The dumpster was put way closer to the building away from the neighbors. In this case the convenience of everyone was considered except the neighbors. When the dump truck came on to the property, he could hear it because it was so close. He was not here to say he knew a better location; it was up to the developer to determine that. Their interest needed to be considered. Their property was losing value because the dumpster was clearly visible. They walked out onto the deck and it was right there. He appealed to the ZBA to be reasonable from the Zolotarev's perspective because they were definitely affected by this as well as their property was affected. In the picture on the overhead, doors were stored behind the dumpster. He could see these from his deck. He opposed granting the requested variance.

Member Lindquist confirmed that it was Mr. Zolotarev's property that had the notch in the property line. Presuming that the dumpster enclosure was required to be moved to the east by 20 feet, so that it was 22 feet away from the property line, did Mr. Zolotarev feel that would have a dramatic impact on the visibility or the smell or the blowing trash, or would it be simply 20 feet further away and a little smaller from his backyard?

Mr. Zolotarev said it would be a good deal different because it would be behind evergreen trees. It would be not as visible from their property and the wind would not blow the trash over. There was nothing he could do about the smell. It would be better if the dumpster were moved further away toward the front of the building.

Member Lindquist said that for purposes of conversation, if they were to require the proponent to put plantings – arbor vitae or something that stayed green all year – in between the existing enclosure and the Zolotarev's home, would that alleviate the problem with the visibility? If there were plants there that would preclude trash from blowing into the yard, would that be helpful to their situation?

Mr. Zolotarev said it would help with the visibility part but the trees would have to be mature trees. Right now the walkout deck would require 12-14 foot tall trees to block the visibility. Bushes or trees at 6 or 8 feet would not block the view.

Member Lindquist said that the ZBA had the authority to add a condition as to the size and the depth of the screening. In that circumstance, if they were able to propose adequate screening, would that make more of a difference for Mr. Zolotarev than relocating the dumpster 20 feet to the east without any screening?

Mr. Zolotarev said it was preferable to move the dumpster away 20 feet, so it was complying with Farmington Hills Ordinance.

Member Masood confirmed that the Zolotarev home was the one directly affected by the property line, 38430 Lowell Drive. Mr. Masood asked staff how far the house was from the dumpster. Zoning Representative McGuire said that what she remembered from conversation with staff – and this was memory only – the dumpster was about 85 feet from the house.

In answer to an earlier question, Zoning Representative McGuire said the normal side yard setback for this property for an accessory structure was 8 feet.

Member Lindquist asked staff if the Board had previously interpreted that this type of structure was not actually a structure according to the Ordinance, in resolving a previously heard issue about a parking structure. Zoning Representative City Attorney Morita explained that the parking lot structure did not relate to the case before the Board this evening; that interpretation was specific to that case.

Member Lindquist asked if the Board required the proponent to build a new dumpster enclosure, would they also be required to destroy the current enclosure?

City Attorney Morita said she thought it would have to be demolished.

Member Stevens asked Mr. Zolotarev if the dumpster were moved to meet the 20 foot setback requirement but it was actually physically closer to his property, would he be opposed to that?

Mr. Zolotarev said this would not be possible. He pointed out that Kindercare had a dumpster in the front of the building previously, and had received a variance for this location. That dumpster location had not caused any headaches.

Member Stevens said he thought there was a possibility that if the applicant moved the dumpster in accordance with the 20 foot setback, it might in fact be closer to the Zolotarev's house.

Mr. Zolotarev said he would rather that the dumpster be placed further than 20 feet and north. He did not want the dumpster closer than 20 feet from the property line.

R. Shabana, 30802 Knighton Drive, Farmington Hills MI., said that he lived in the same subdivision – Country Ridge – that contained the residents who had this issue with the dumpster. He had been a resident of Farmington Hills since 2004. He was in favor of the variance. He had received many benefits from Al Falah Institute, including its close location. Many Muslims migrated out of Farmington Hills to attend mosque, and having the Institute close by kept residents of the Muslim community within the Farmington Hills community. He was a frequent visitor to Al Falah Institute and during one month of sweltering heat

he had been there almost daily. He had never smelled any odors or seen any trash anywhere. He did not see how moving the dumpster a few feet would affect any alleged odors. The Institute was non-profit and only a year old. The Board should be hesitant to punish the Institute for complying with City approvals. A requirement to move the dumpster enclosure would be a huge detriment to the Al Falah Institute. Again, he was in favor of the variance.

Member Lindquist clarified that while Mr. Shabana was in the subdivision, his was not one of the properties that bordered the Institute and his property was not depicted on any of the maps shown this evening.

Diana Zolotarev, 38430 Lowell, Farmington Hills MI, spoke against granting this variance request. She said the dumpster enclosure was 1.5 feet away from her property. She could see the dumpster from her living room, kitchen, and dining room. She had lived there for almost 24 years and never had shades on her windows because of the beautiful trees. She agreed that probably the dumpster was about 85 feet from her house, but she was not always inside her home and did not want to be confined there. She could smell the garbage in the summertime. Walking and sitting outside on her property was something allowed – it was why she paid taxes for 24 years. While \$24,000 was a lot for a nonprofit organization, the Zolotarevs also had paid taxes and a mortgage for 24 years. They were retiring this year, and their property value would plummet hundreds of thousands of dollars because of this dumpster. She spoke of her experience leaving the Soviet Union in order to build a life here, while obeying the laws and rules of this country. Now she was being asked to be confined to her home because of \$24,000. She said that the plans had been drawn in an interesting way, so that the City thought the setback was 22 feet. It was a tricky plan, and now it turned out the dumpster was 2 feet away from their property line. She could no longer enjoy her yard, house, or deck. The number of feet from the dumpster to the house should not be questioned. Should she not work in her yard or have company at her home? She would lose hundreds of thousands of dollars in her retirement years because of the dumpster. It should be moved. She was opposed to granting the variance, which would grant a variance for almost the entire 20 foot setback. She asked the Board to put themselves in her situation that in one day she could suddenly not enjoy her yard. She was thankful for the wonderful job the Institute was doing. Moving the dumpster to a proper location was not going to affect in any way the good work done by the Institute. But keeping the dumpster in its current location would affect her entire family, including her extended family. Moving the dumpster 20 feet away would not bring it closer to any house. She asked the Board to reject this variance request.

Member Masood thanked Ms. Zolotarev for her comments. He asked her if she had any documentation regarding a loss in property value of her home due to the dumpster location. Ms. Zolotarev said her property value decreased when she was not able to go in the back yard. It was decreasing currently because she could not sit in her kitchen without looking at the dumpster. She could not be in her family room or dining room. Guests commented on the dumpster visible from her dining room, even now when leaves were still on the trees. Upon a further question from Member Masood, Ms. Zolotarev said she had not had the property appraised by a realtor in order to say how much the dumpster or the smell or the trash detracted from the value. However, she would not buy a house with a stinky back yard.

Member Vergun asked if Ms. Zolotarev could see the physical dumpster from her home, as opposed to just the brick enclosure. He pointed out that the enclosure was required – at least partly – to cover up the dumpster. Ms. Zolotarev said that from the first floor she could clearly see the entire dumpster enclosure and whatever they started storing about two months ago behind it, and from the second floor she could clearly see the actual dumpster.

Adel Fakhouri, 29676 Dorchester Court, Farmington Hills MI, and a managing partner for the Fakhouri Law Firm, Southfield, MI, said that he also lived in this neighborhood on the other end. He had heard

what was said this evening and as a practicing real estate attorney he was with some neighbors who lived west of the Institute. There were also neighbors who lived two houses west of the Institute, who were not able to attend. He had intimate knowledge of the properties involved. The biggest point was that while there were speakers from the Institute who were well qualified in some ways, they did not have properties that were adjoining to the Institute. Even though they had opinions on what the Institute was doing and the good work in the neighborhood, they were not directly affected by the dumpster. The most important opinion was that of the two people who just spoken who had intimate knowledge and could see the dumpster. Also the other neighbors at 30470 and 38510 Lowell Drive – the way the back yards were positioned for all 3 homes including their decks, they all had direct point of view sight to the dumpster. With the house directly behind it, the point they were making to the Board is that they would feel much more comfortable without risking the protection to which they were entitled – the 20 foot setback. They would like to have the dumpster behind the evergreens. Their concerns and voices should probably be given the most weight than other people coming in and explaining what the Institute had done. If the Board looked at these neighbors, they were directly behind the dumpster and that is where their view was. Their suggestion was to move the dumpster where it was not as open, as the Kindercare did before when it was moved to the front. While they could appreciate the cost to doing this, Mr. Fakhouri also noted that the Al Falah Institute, being nonprofit, was also not paying taxes. The residents behind them all paid taxes. He assumed that the Al Falah Institute had put hundreds of thousands of dollars toward the renovations over the last two years. While the \$24,000 was a cost, the Board had to weigh that against the quiet enjoyment and the value for the neighbors directly affected by the dumpster in an open area. He was opposed to granting this variance.

Member Lindquist asked Mr. Fakhouri if he represented the homeowners in the neighborhood. Mr. Fakhouri said the homeowners were his clients. Specifically, his clients resided at 38430, 38470, and 38510 Lowell Drive.

Mohamed Ayub-Khan, 22203 Atlantic Pointe, Farmington Hills, MI said he felt the residents were being emotional and not rational. He noted that in his corporate office, several stories high, he could directly see a dumpster. This was not going to be moved because he could see it. The Institute could plant evergreen trees that would screen the dumpster. Regarding the dumpster, he often parked near this and there had never been a smell. The Institute was not a restaurant and did not dump food daily. It would not make a big difference to the complainants to move the dumpster 20 feet. He was in favor of granting the variance.

Audience Member, 53840 Bentley Road, West Bloomfield, MI, said that he had visited Al Falah and the location of the dumpster was appropriate for trash hauler pickup. Moving the dumpster would hinder how the trash was picked up. He reiterated that this was not a restaurant and there was no smell. Moving the dumpster would reduce parking spots. In their community men and women did not mix, and the entrance on the rear was mostly for ladies. This entrance would be more difficult if the parking was reduced. There was no tangible benefit to moving the dumpster that would lead them to increase property values. At other locations property values rose due to a mosque being close by as the community preferred to live close to their facility.

Nawal Zqaihi, 38470 Lowell, Farmington Hills, MI, said that she lived directly next door to the Zolotarevs. While she appreciated those who were speaking in favor tonight, they were not directly impacted by the dumpster. The close residents' views, opinions and thoughts should have priority. She had lived and paid taxes in the neighborhood for 22 years. She did not appreciate having garbage in her back yard, which they had to continuously clean. This past summer they could not use their deck because of the smell. It was hard to listen to other people who did not live there or were not impacted by the dumpster. She opposed granting the variance.

Member Lindquist confirmed that they received trash from the dumpster. Ms. Zqaihi said that the trash got hung up in the back of their property. They had not experienced that in the past. In response to further questions from Member Lindquist, Ms. Zqaihi said the dumpster enclosure was visible from her deck and family room. The residential area was designed on a curve so no matter which angle you were in, you could see it. They had not had this issue with the Kindercare.

Member Lindquist asked if the variance was not granted and the dumpster was required to be moved in order to be 20 feet from the property line, if the dumpster was moved 20 feet to the east – a permitted spot – would that have a dramatic impact on the odors, the visibility and the trash going in Ms. Zqaihi's yard?

Ms. Zqaihi said that moving the dumpster east was not an answer. Moving it north closer to 14 Mile Road was the answer. Moving it east would just move it to the other neighbors' areas.

Member Lindquist pointed out that to the east would be a permitted location. If the City required the Institute to move the dumpster to a permitted location, they would probably move it 20 feet to the east within the parking lot or closer to the rear property line, where it would be close to 38390. He was trying to ascertain whether Ms. Zqaihi believed moving the dumpster would have a dramatic impact on the odors, the trash or the visibility of the dumpster structure.

Ms. Zqaihi said it might to some degree because of the way the angle ran, so 20 feet east might bring the dumpster further north. The best way to think about it was to move the dumpster further north away from the residents.

Member Lindquist noted that the visibility of the structure from Ms. Zqaihi's home was across the property located at 38430 Lowell Drive.

Ms. Zqaihi said that actually her property was at an angle so she could see the dumpster directly. It was very visible and the smell at night, when the breeze was blowing, was blowing right into their home. She could not open her windows for most of the breezy nights.

In response to a question from Mr. Masood, Zoning Representative McGuire said there had been a complaint regarding trash outside the dumpster; this had been resolved. Currently the Institute was under enforcement for the dumpster location. They had received a ticket, and had opted to pursue a variance. All enforcement regarding the dumpster location stopped while the variance procedure moved forward.

Member Lindquist asked when the dumpster location was built. City Attorney Morita said that this would be a question for the proponent.

Mr. Khan, 24540 Ridgeview Drive, Farmington Hills, MI, spoke to his family's residency, employment, and children being raised in Farmington Hills. He understood that the residents near to the Institute did live there while others did not. He pointed out that this dumpster location did not represent willful disobedience, but the location had fallen through the cracks as already stated. However, moving the dumpster into a permissible zone, 20 feet away, would not make a difference regarding odor. Rather than applying a penalty of \$24,000, while moving the dumpster into a permissible zone, still the sight, odor, etc., would remain unchanged. He would recommend a creative solution that the Institute and the property owners work out visual camouflage and odor suppression. There had to be an amicable solution. He was in favor of the variance.

In response to questions from Member Lindquist, Imam Mangera said that as far as he remembered the dumpster enclosure was completed around August 2014. The dumpster was emptied every 2 weeks, as

they did not have much garbage. They had a dinner once a month; other than that they did not generate much trash. Many times it had gone empty.

Imam Mangera said that he had previously been the Imam at the Tawheed Center, starting in 2006. They had a neighbor there that had been unhappy with some of the things that happened. By the end of his being at the Tawheed Center, he had a great relationship with that neighbor to the point that she offered to teach him golf. At the present location, always his concern was that the neighbors should not be affected, and he had tried everything. For instance, when they had late prayers, sometimes they kept the windows closed. One neighbor, Mrs. Lee had also written a letter, stating that before the Institute came the Kindercare was there and a lot of garbage would come to her property. Since the Institute had come she hadn't experienced that. After the Al Falah Institute had learned of the complaint about strewn garbage, they had changed their process. The event had happened because in their efforts to mentor youth they had asked the youth to throw away the garbage as something that would bring some humility to them. However, instead of putting it inside they had put it outside. Since then the Imam had made sure that he personally checked after every event to make sure there was no garbage around. Also during the time the garbage had gone to the neighbor's property there was no fence because it had been removed for a temporary silt fence. There was now a fence. Whenever garbage went out either he or his partner took it out. He pointed out that they had a party last Saturday; on Sunday the garbage area was completely clean. Their goal was to give a good example to others. He asked the Board to grant the variance.

Imam Mangera further explained that when they had discovered they were only 2 feet from the property line it had been hard to believe, as it had taken over a year to get the permits to start building. He had been to the City many times in order to make sure everything was done exactly right. When he found out about the setback issue, he had met with the neighbor and offered to plant trees 8-12 feet high, as there was now only space toward the back to relocate the dumpster. The smell issue would not be changed by moving the dumpster 20 feet. Moving the dumpster further back might be an issue for other neighbors – this had been his concern. Even when he tried to fix it, the space was very tight and they didn't have too many options. He felt the best solution would be to keep the dumpster where it is, maybe change the garbage container from a 6 quart to a smaller one which was emptied every week, regularly keep the area clean, and put trees behind to shield – maybe three 10-12 feet arbor vitae – something of that nature. Hopefully they could move forward and develop good relationships.

Mr. Coles said that he had three clarifications:

- There would be a dumpster enclosure on this property. While he could not speak to property values, this should really not impact property values. However, even if it did, the change to the property value from the current location to some city-approved location would be negligible, because there would still be a dumpster enclosure at the south end of this property.
- The south end of the property would be the new proposed location, if the dumpster enclosure had to be moved. It would be located approximately on the plan shown to the ZBA this evening by Architect Stempien. This location would be closer to the homes, something they wished to avoid.
- The current location had been on all the construction plans. There had been no trickery or misrepresentation. The plans had been reviewed by multiple people and had been stamped approved. There was no disagreement that the setback was not properly applied. But the fact was they followed the process through all the City's procedures.

Mr. Coles requested that the Board grant the variance.

Chair Seelye asked City Attorney Morita if the dumpster could be moved north two or three feet to the north, would it comply with the ordinance? City Attorney Morita explained the applicant would have to

move the dumpster 18 feet to the north in order to comply with the 20 foot setback requirement from the property line.

Seeing that discussion had ended, Chair Seelye asked for a motion.

MOTION by Lindquist, support Barringer, in the matter of ZBA Case 10-15-5571, to GRANT the petitioner's request for an 18 foot variance to the required 20 feet from any residential property line or district, 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 unreasonably prevent the petitioner from using the property for permitted use or would render conformity with the ordinance unnecessarily burdensome; the burden lies with the City of Farmington Hills in approving a plan that was in one dimension not sufficiently far from the property line and it is an unnecessary burden on the property owner.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district; in this particular matter the conditions will address the adjacent and nearby property owners concerns.
3. That the petitioner's plight is due to the unique circumstances of the property, there is a unique boundary in this case.
4. That the problem is not self-created, the burden is with the City in applying all the setbacks to every property boundary.

SUBJECT to the following conditions:

- 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.
- The Institute will dispose of all materials that surround the dumpster enclosure, outside the dumpster enclosure and there shall be no materials or equipment stored in the vicinity of the dumpster enclosure at any time.
- The Institute will monitor the dumpster and make sure the area is, to all reasonable practical abilities, free of odors, not visible to the adjacent properties and not strewn with loose or blowing trash.
- The dumpster shall be emptied on a weekly basis.
- There shall be review before this Board upon complaints of blowing trash or odors, and subsequent investigation by the Department, at which time the proponent may be in violation of the conditions of the variance.
- The dumpster shall continue to be enclosed, the doors are to be closed at all times and the dumpster shall never be full to the point in which the doors are open.
- For special events where a large number of meals are served, an additional dumpster pick-up shall be scheduled within 2 days of the event.

Member Rich asked if the motion should include the Institute going to a smaller dumpster, as the Imam had offered. Member Lindquist said the motion required cleanliness and weekly pickup; he thought the Board should leave it to the Institute how they would best accomplish this.

Member Rich said that it was his understanding that the City did have ordinance requirements regarding smells and trash, and should there be violations in this area, citations could be issued. Zoning Representative McGuire concurred.

Member Stevens said that though he was going to support the motion, he wanted to make it clear that the City's review of a document did not relinquish a property owner or a petitioner from following ordinance requirements.

Member Vergun agreed with Mr. Stevens. He also planned on supporting the motion. In light of the many comments made this evening, the main reason he was in support was because the Board largely knew where the dumpster would be moved if it were required to do so. The new location would just be shifting the burden of the closeness of the dumpster from a property owner to another property and they had not heard from all the homeowners shown on the map. Whether or not they had heard from everyone, the Board did need to take into account the thoughts and concerns of all homeowners, whether or not they were here to speak.

Chair Seelye called the motion.

MOTION CARRIED 7-0

- B. 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: Z&M Gas, Inc.

After this case was called, members of the audience continued to speak to the previous case, and Chair Seelye called a short break at 9:17 p.m. The meeting was reconvened at 9:21 p.m.

Zoning Representative McGuire discussed the location of the property and presented an aerial map of the property, as well as a description of the current state of the property which included several zoning violations and blighting factors for which the property was now under enforcement. Landscaping on the site had deteriorated, and landscaping needed to be brought into conformance with the approved 2002 landscape plan. Other zoning issues included parking of junk vehicles, graffiti on pumps, and blighting factors behind the store, as well as a currently damaged 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. She referenced the minutes of November 12, 2002, where the station was described as being impeccably maintained, and the care of the station was given as one reason to grant the special exceptions requested at that time. That situation had apparently changed.

Zoning Representative McGuire also noted that ownership of the station was unclear. The owner as listed on the application did not appear to be the listed owner of the property. The paper trail for ownership was also confusing.

Terrence Ulch, Aver Sign Company, 359 Livernois, Ferndale, MI, was present on behalf of this application. Mike Berry was also present.

Mr. Berry said that he was the current owner of the property, though he had not signed the application. He was purchasing the property under land contract. Barrick actually owned the property.

Zoning Representative McGuire pointed out that the owner was listed as Z&M Gas, and the owner's signature on the application was unreadable.

In response to a question from Member Masood, City Attorney Morita said that a requirement of the variance was that the owner had to sign the application.

After further discussion regarding ownership issues, Chair Seelye asked the applicant if they wanted to go forward this evening or if they would like to adjourn for one month in order to clear up ownership of the property. The matter would not have to be re-advertised, but this would give the applicant time to amend the application so that correct ownership could be shown.

The applicant agreed to adjourn for one month.

MOTION by Lindquist, support Masood, in the matter of ZBA Case 10-15-5572, to ADJOURN the consideration of this case to a date certain, that being the Zoning Board of Appeals meeting of November 10, 2015, to allow for the proponent to work with City staff to:

- Determine the ownership of the property and who should properly sign the application,
- Determine who is subject to enforcement of the prior conditions set in 2002, particularly regarding the landscaping and overall current condition of the property as well as the current condition of the sign,
- Amend the application so that it is correctly filled out and provides all necessary information to the extent that it would not require re-advertisement.

MOTION CARRIED 7-0

C. ZBA CASE: 10-15-5573
LOCATION: 37655 Interchange Drive
PARCEL I.D.: 23-19-252-020
REQUEST: In order to approve a lot split which would result in two parcels in an IRO/FRW-2 zoning district, the following is requested: **PARCEL A. 16.2 variance** to the required 40 foot rear yard setback: **PARCEL B. 1.7 foot variance** to the required 30 foot side yard setback.
CODE SECTION: 34-3.1.28.E
APPLICANT: Stuart Frankel for K-F Land Company, L.L.C. I
OWNER: K-F Land Company, L.L.C.

Zoning Representative McGuire clarified that the Board's charge this evening was to look at setback variance requests. Ultimately the lot split would be heard and decided by the Planning Commission.

Zoning Representative McGuire discussed the location of the property and presented an aerial map showing the configuration of the property and the lines of proposed Parcel A, which would be broken off from proposed Parcel B. Parcel A would have rear and side yard setbacks that did not conform to Ordinance standard, which was why the application was before the ZBA tonight.

Zoning Representative McGuire also pointed out that should the ZBA grant the requested variances and the lot split then be approved by the Planning Commission, corrections would have to be made to the existing sign, which as now constituted would be nonaccessory to the use on the new parcel A. Other violations would also need to be addressed, including correct signage at the handicapped parking spaces, and the deteriorated dumpster enclosure.

Member Stevens pointed out that the agenda reflected a request for a variance for Parcel B. This was inaccurate as both variance requests were for Parcel A.

City Attorney Morita concurred that this was in error; however the matter could be heard this evening as the notice was clear that the applicant was asking for variances for setbacks on this particular parcel.

Stuart Frankel, K-F Land Company, LLC., 1334 Maplelawn Drive, Troy MI 48084, and property owner, was present on behalf of this application. Mr. Frankel explained that he was the developer and owner of this industrial park; he had developed it in the 1970's. The building in question had been vacant for 5 years. He now had a business that wanted to occupy the building on the condition that they were able to purchase the building and not lease it. The purchaser would bring their corporate headquarters to the building.

Mr. Frankel continued that in order to achieve this goal, he had to request a lot split from the Planning Commission. This lot split would require two variances as listed, only both variances would be for proposed Parcel A. On the east side of the building, architectural features created the need for a setback variance; it would not be needed if the features were removed and the face of the building were used as the building footprint. The features represented an insignificant portion of the east side of the building.

Regarding the south side of the building, the setback requirement could not be satisfied without putting the building immediately behind it in violation of its own setback requirement.

Mr. Frankel said that he, as owner of Parcel B, would be responsible for all upkeep and maintenance of the common areas.

Chair Seelye asked how this problem was not a self-created hardship. He felt it was entirely self-created.

Mr. Frankel said that when they built this development they had not contemplated a sale of the building. The hardship was that circumstances had changed from 40 years ago, so that leasing was no longer suitable and purchasing was the more suitable venue for this property. Regarding the east side of the building, he did not think that they were in violation of the spirit of the setback requirement, as previously explained. 95% of the face of that side of the building met setback requirements. On the south side, he could not satisfy the setback requirement without making the other building in violation of setback requirements.

Member Lindquist and Member Vergun confirmed with Mr. Frankel that he would maintain the entire site, even though there would be a separate owner for Parcel A. Mr. Frankel explained that he would maintain the common drives, the common dumpster area, etc. The occupants of Parcel A would pay a pro-rated share. This would be a typical cross-easement agreement.

Member Vergun asked if there were any plans for expansion or site improvements on proposed Parcel A. Mr. Frankel said the new owner would be responsible for any such improvements. Significant improvements would be made to the interior of the building. There were no plans to expand or change the building's footprint.

Member Masood clarified with Zoning Representative McGuire that the access would be shared by the users of Parcel A and Parcel B. Ms. McGuire noted that the Planning Commission would need to determine that the access was appropriate for all parcels.

City Attorney Morita added that under the Land Division Act each parcel would need road frontage; these parcels met that requirement. However, she reiterated that the Planning Commission would make the final determination regarding the lot split itself. The Zoning Board of Appeals needed to just look at the variances and weigh the factors that they always considered for a non-use variance.

Member Lindquist asked if an approving motion could be conditioned on the applicant receiving lot split approval from the Planning Commission.

City Attorney Morita said that that condition could be added, but the Board should look at the conditions of the variance and make sure that those conditions for approval existed, without thinking ahead to Planning Commission approval of a lot split.

Member Stevens asked if there was another mechanism to achieve what the applicant was trying to do. For instance, couldn't they create a condo situation, so that each individual building could be owned with common site elements?

Mr. Frankel said there was always a way to do anything. However, the purchaser wanted to buy the building free and clear, without dealing with a condo association. The idea of a condo association was a whole different concept.

Acknowledging Member Lindquist's comments about conditioning the variance approval on the lot split happening, Mr. Frankel said that if the Planning Commission did not grant the lot split, the requests for the setback variances disappeared.

Chair Seelye opened the Public Hearing.

Michael Lusardi said that he was the real estate attorney representing the purchaser. He explained that his client wanted to own the property instead of leasing it for investment reasons.

Seeing that there were no further comments, Chair Seelye closed the public hearing.

Seeing that no rebuttal was necessary, Chair Seelye brought the matter back to the Board.

MOTION by Rich, support Vergun, in the matter of ZBA Case 10-15-5573, that the petitioner's request for a 16.2 variance to (a) the required 40 foot rear yard setback and (b) a 1.7 foot variance to the required 30 foot side yard setback for PARCEL A be **GRANTED**, 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.

2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district.
3. That the petitioner's plight is due to the unique circumstances of the property, specifically as the property was developed the buildings were placed as is and the orientation and the dimensions of the property itself make this property particularly unique.
4. That problem is not self-created. Theoretically the owner of the property could have elected not to build the buildings and if there were not 3 buildings on the property there would not be an issue, however because the buildings exist as they do, the property owner is coming before the Board to request a variance, which is the purpose of having the Board. With the unique orientation of the buildings, if you move the property line for Parcel A to the south to be in compliance, the larger building in Parcel B will then be out of compliance, therefore, there is no way to make all the properties comply. Any subsequent property owner will know exactly what the underlying deficiencies are and if they do not like the fact that the building is too close to the other building based on the property lines, then they will not buy the building. In regards to the variance to the east, the architectural structure is not a detriment it simply makes it more attractive in the overall frontage or face of the property within the appropriate setbacks.

SUBJECT to the following conditions:

- Approval of the Lot Split, as set forth by the applicant, be granted by the Planning Commission within 12 months.
- The variances granted are to the proposed Parcel A as depicted in the packet submitted by the applicant.
- The Lot Split be as depicted in the materials submitted by the applicant.

Member Stevens was concerned that the ZBA was granting setback variances for an unknown future for this property, including total redevelopment of proposed Parcel A. He would be more comfortable if the variances were conditioned on the building not being modified.

Member Rich agreed, saying that the variance as stated would allow the entire wall to be moved out to the new setback established by the motion. Member Vergun also concurred and the following condition was added:

- If the footprint of the building is modified, the variances will be voided.

MOTION CARRIED 7-0

D. ZBA CASE: 10-15-5574
LOCATION: 25780 Middlebelt
PARCEL I.D.: 23-24-101-015
REQUEST: In order to build a 375 square foot addition to an existing building in a B-2 zoning district. The following variances are requested to the 75 foot setback from residential district on the southeast side: (1) **50 foot variance** to the rear yard setback (2) **23 foot 8 inch variance** to the side yard setback.

CODE SECTION: 34-3.1.24.E & 34-7.1.3.A
APPLICANT: The Kroger Company (c/o Frank Brown)
OWNER: The Kroger Company

Zoning Representative McGuire discussed the location and presented an aerial map and photos of the property, which was a strip mall east of Middlebelt and south of 11 Mile Road. The entire strip mall was owned by the Kroger Company. She pointed out outdoor storage on the property, including product storage. She noted that the Planning Commission had previously approved a small shed in the area near to the delivery truck well at the rear of the building. The purpose of this still unbuilt shed was to house items currently being stored outside, especially pallets; this was also the purpose of the desired addition being discussed this evening.

Zoning Representative McGuire noted that the setback variances requested did not increase the line of the building, but rather filled in a corner so that it would match the lines of the building as it currently existed.

Zoning Representative McGuire noted that since 2007 the store had been ticketed 5 times for outdoor storage, 4 times for commercial blight, and 3 times for loading and unloading during nonpermitted hours. Additionally, the store was in constant communication with the Zoning Department regarding its outdoor storage and blight issues, especially near the southeast corner of the property.

Matthew Peters, of Jeffery A. Scott Architects, 32318 Grand River Avenue, Farmington MI, was present on behalf of this application. He said they were asking for variances that were consistent with the spirit of the ordinance and would allow the building of an enclosure to house items that were seen in the photographs shown this evening. The building was nonconforming already, and the ordinance itself as it was developed created the setback conditions that did not exist at the time the building was constructed. They were looking at squaring off the building so that the enclosure could take care of the conditions that were creating issues at this time.

Chair Seelye confirmed with Mr. Peters that if the variances requested were granted, there would be zero outside storage.

Member Rich confirmed with staff that the application was before the Board because by adding the new structure, even though it didn't increase the setback violations per se, it was still an expansion of an existing nonconforming structure.

City Attorney Morita said it was a nonconforming structure but the variances would not enlarge the nonconformity. If the variances were granted, the store would still have the same nonconforming setbacks that they had before.

Chair Seelye opened the Public Hearing. Seeing that there was no comment, Chair Seelye closed the Public Hearing and brought the matter back to the Board.

MOTION by Stevens, support by Barringer, in the matter of ZBA Case 10-15-5574, to GRANT the petitioner's request for a 50 foot variance to the rear yard setback and a 23 foot 8 inch variance to the side yard setback 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 unreasonably prevent the petitioner from using the property for a permitted use or would render conformity with the ordinance unnecessarily burdensome; the addition does not further expand the non-conformity from a

setback standpoint and it would improve the outside storage situation with regard to its current condition.

2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent justice with the property owners; the setbacks are not being increased and the height of the structure is less than the current building height.

SUBJECT to the following conditions:

- Any outstanding violations are to be remedied
- No outside storage will be allowed, as the purpose of this addition is to house all the materials that are currently stored outside

MOTION CARRIED 7-0.

E. ZBA CASE: 10-15-5575
LOCATION: 22291 Lujon
PARCEL I.D.: 23-31-204-008
REQUEST: In order to build a covered porch in a one family RA-1 zoning district. The following variance is requested: **11 foot 8 inch variance** to the required 30 foot rear yard setback, resulting in an 18 foot 4 inch setback.
CODE SECTION: 34-5.1.A.
APPLICANT: Lawn Guru (Justin Booth and Brandon Bertrang)
OWNER: Dominic Vella

Zoning Representative McGuire referred to the September 3, 2015 letter from City Planner Stec, which read in part: "The home is located within the Walnut Ridge subdivision which was developed as a one-family cluster subdivision in the RA-1 district with a minimum 30' rear yard setback for this lot." Ms. McGuire explained that the cluster option allowed developers to create smaller lots in return for open space enjoyed by all the residents of the development.

Zoning Representative McGuire discussed the location and presented an aerial map of the property, a schematic showing surrounding zoning, plans for the pavilion submitted by the applicant, and a site plan for the property that showed the proposed covered porch over a franchise easement. Ms. McGuire referred the Board to a letter from Engineer Manager Cubera dated 10/12/15 stating that: "Our office recommends that no encroachment of any kind be allowed in a public easement."

Zoning Representative McGuire also showed photographs of the rear of the property and surrounding properties, noting that the outdoor deck was already constructed. The photos showed stakes in two locations; the applicant should address what these signified.

Justin Booth, 29357 Hampton Court, New Hudson MI 48165, co-owner of Lawn Guru, said that Ventures Design was the name of their company for this type of work. He distributed a final rendering of the end goal of this project.

Mr. Booth explained that Mrs. Vella was from Australia and Mr. Vella had spent significant time there. Back yards in Australia did not have much grass; the Vellas were accustomed to large patio areas. They were seeking a full entertainment space to fully utilize the land to the best of their ability.

Regarding the two posts, the one furthest out represented the 11'8" variance requested. When the applicants learned that this would not get approved they had reduced the pavilion and come up with an alternate option for the covered area, which would be the second post.

Mr. Booth said he had proposed two plans: a plan A and a plan B. Plan B was for an 8' variance that did not encroach into any public easements. Therefore the only issue was obtaining an 8' variance for the setback. The desire was for useable space. If they wanted to do a detached structure they would have that option but it would have to be 10 feet from the house, and such a structure would definitely be over a public easement and be too close to the rear property line to allow a functional space. Having something that was attached to the house and staying out of public easements was the best way to go to get what the applicants wanted.

Referencing the rendering he had distributed, Mr. Booth spoke to the quality construction and design of the proposed structure. Other homeowners in the area had raised patios and steel framed brick and mortar decks – this was a deck over a walk out basement, effectively giving the homeowners a covered area. Adding a structure like that proposed this evening would help to increase property values. The homeowners' association had approved this proposal, based on getting permits from the City.

Mr. Booth said this subdivision was built in a unique spot. There were older subdivisions that connected to this subdivision, and within those old subdivisions there were structures similar to this one; this structure would therefore not be out of place.

Chair Seelye confirmed with City Attorney Morita that the issue was not with the patio, but only with covering it.

Chair Seelye asked Mr. Booth to explain how this was not a self-created hardship. Mr. Booth said that in order to offer any sort of shade, the only other option was to do something that was moveable which didn't look as good and didn't do anything for property values. The way the subdivision was built with the setback so close to the back of the house created a situation where there was not enough useable space to built anything off the back of their house.

Chair Seelye confirmed with Mr. Booth that he realized that anything built over an easement was at risk for being torn down should work need to occur in that easement. Mr. Booth said they definitely understood that risk, which was why they had come up with two plans for the pavilion – that was why they had proposed option B, which was not over an easement.

Member Masood asked City Attorney Morita why the patio was not under consideration since it was on the easement. City Attorney Morita explained that no permit was necessary to build a patio as it was not structural in nature and was not attached to the house. No variance was required for the patio. Responding to further questions from Member Masood, Zoning Representative McGuire concurred, saying that the applicants had built the patio at their own risk over the easement. There was no enforcement against the patio.

City Attorney Morita further explained that the difference with a covered patio is that it would be attached to the house and would be really expensive if it had to be torn down because work had to be done in the easement area. The current request would put the Board in a position where they would be giving permission by granting a variance to build in an easement area, knowing that this was a potential situation. In terms of the patio, the applicants did not have to ask permission and the City had no role to play in its current location – it did not have to "give its blessing." In the case being heard, the Board

would not want to be in a position of having approved a location that would later prove to be a problem for the homeowner.

Zoning Representative McGuire commented that should the variance be granted this evening, the Board needed to consider whether others in the same community might then wish to appear before the Board in order to have covered rear decks and porches, resulting in a de facto change to the setback standard for an entire community.

Member Lindquist confirmed with Mr. Booth that the homeowners' association had approved the plans for the patio and covered porch as presented to the Board, including the rendering shown to the Board this evening.

Mr. Booth further explained that he had sent an approval letter from the Homeowners' Association to the Zoning Division. Zoning Representative McGuire confirmed that this was not in the Members' packets or in the original file. Mr. Booth said that after the zoning notifications went out, none of the neighbors had opposed this structure.

Member Lindquist noted that the rendering provided this evening showed a pool on the property; Mr. Booth said they were not here this evening to talk about the pool. Should the pool move forward, they would return to the City for proper permits, etc. The rendering showed a conceptual 3-D design. In this particular case the homeowners wanted to move the project forward in phases, and they had not even begun to discuss the pool.

Member Lindquist said he understood that the pool was not under consideration this evening. He was having a difficult time understanding the renderings because they were two-dimensional, with one side only. He could not tell the depth of the columns or how far back they were or where they were placed spatially. A top-down view had not been provided. With the rendering presented this evening with a swim pool, Mr. Lindquist was concerned it had been a generic design. He confirmed with Mr. Booth that the presented rendering was in fact the exact design proposed for this application.

Mr. Booth explained further that the rendering showed an unfinished area over the easement that would be a Washers court with artificial turf. This was sometimes called Poor Man's Horseshoes.

In response to a question from Member Lindquist about the planters shown, Mr. Booth said the idea was also to have arbor vitae around the entire property.

In response to a further question from Member Lindquist, Mr. Booth said the stake closer to the house shown in the displayed photo represented Plan B, which had been presented to City Planner Stec. He thought the Board should also have copy of this alternative plan.

Zoning Representative McGuire said that she had been told Plan B would not be presented this evening. However, this would represent a lesser variance and thus could be discussed.

Mr. Booth concurred that his understanding was that the ZBA could grant a lesser variance this evening, and Plan B was out of the easement so that eliminated the easement problem.

Zoning Representative McGuire asked Mr. Booth if there was going to be a fireplace, as shown on the drawings. Mr. Booth said this would be up to the homeowner; right now all he was concerned about was the roof.

City Attorney Morita cautioned Mr. Booth that any fireplace and/or fire pit required very specific permitting processes. She asked that the record be clear that whatever was considered by the Board tonight did not include any approvals of fireplace placement.

In response to a question from Commissioner Seelye, Mr. Booth said Plan B would require an 8 foot variance. The entire pavilion would be behind the easement.

In response to a question from Member Masood, City Attorney Morita said the larger variance was the one advertised, which was all that was required. The Board could choose to give less relief than that advertised.

Mr. Booth gave the Board the plans for lesser variance Plan B.

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

MOTION by Masood, support by Lindquist, in the matter of ZBA Case 10-15-5575, to DENY the petitioner's request for an 11 foot 8 inch variance to the required 30 foot rear yard setback, because the petitioner did not demonstrate practical difficulties exist in this case; specifically because it is building over an easement, the City's Engineering Department recommends no encroachment, the problem is entirely self-created, it goes against the character of the neighborhood and practical difficulties were not identified.

Member Vergun asked Member Masood if the wording of the motion meant that he was not in favor of the lesser 8-foot variance. Member Masood said that was correct.

Member Rich said that because of the cluster nature of the development there was smaller distance between the properties which made the setback issue that much more important. Extending as far out even as far as option B would detract from the remaining open space behind the structures. The patio was gorgeous but he was having a hard time visualizing this being the only covered patio and how that would look and also trying to visualize if there were covered patios all the way down that row of houses – that would seem to have everything packed tightly together. The other thing he had a hard time actually seeing were the pedestals, and where the columns were being constructed didn't exactly match up with the renderings. But the main issue was that even eliminating the issue of the easement under option B, the variance would not be of substantial justice to the neighboring homeowners and really would not be in conformity with the rest of the neighborhood.

Member Stevens asked for that some of Mr. Rich's thoughts to be included in the motion. Member Lindquist said that he was satisfied with the motion as stated, especially the explanation that the covered porch was out of character with the neighborhood.

Member Lindquist added that he found the apparent endorsement by the homeowners association appeared to indicate that members of the homeowners association, in addition to this particular property owner, were interested in going against the initial plan for this type of common space development, the rules of which were followed when this development was approved. Now they were seeking to abandon the rules surrounding that type of development and neighborhood. For those reasons he could not support this initial change in character, which flew in the face of the zoning for this particular type of development.

Member Lindquist said he would support adding to the motion that there was no practical difficulty shown in utilizing the property for its intended purpose without a covered area.

Member Stevens said he was concerned that the motion was specific to the easement issue, which Plan B had resolved. With the wording as now understood it, he could support the motion.

Member Masood reviewed the wording of the motion as stated above. Chair Seelye then called the question.

MOTION CARRIED 6-1 (Barringer opposed)

- F. ZBA CASE: 10-15-5576
- LOCATION: Albion Street
- PARCEL I.D.: 23-26-484-012 & 013
- REQUEST: In order to reconfigure the lots into two parcels in an RA-4 zoning district: The following variances are requested: **(1) Parcel A. 1,060 square foot variance** to the required 8,500 square foot lot size requirement; **(2) Parcel B. 733.6 square foot variance** to the required 8,500 square foot lot size requirement.
- CODE SECTION: 34-3.1.7 E.
- APPLICANT: Fran Prekelezaj
- OWNER: F. P. Master Handyman, L.L.C.

Zoning Representative McGuire gave the background for this land transfer. She discussed the location of the property and presented an aerial view, schematics of the two properties that would result from the requested transfer, a schematic showing the building envelopes on each proposed parcel, and an aerial of the surrounding neighborhood. She explained some of the unique characteristics of this older neighborhood, including some smaller nonconforming parcels that pre-existed the ordinance, several small parcels that formed a single zoning lot, etc.

City Attorney Morita directed the Board's attention to Section 34-7.1, subparagraph 10.B, which read: "If two (2) or more lots, or a combination of lots and portions of lots, with a continuous frontage and single ownership are of record at the effective date of adoption or amendment of this subsection, or at any time thereafter; and if all or part of the lots do not meet the requirements for lot area or width as established by this chapter, the lands involved shall be considered an undivided parcel or zoning lot for the purpose of this chapter, and no portion of such undivided parcel or zoning lot shall be used or occupied which does not meet lot area or width requirements established by this chapter, nor shall any division of the parcel or zoning lot be made which leaves remaining any lot with area or width below the requirements stated in this chapter."

City Attorney Morita reviewed the Board's charge to look at parcel sizes in the surrounding area when considering whether or not the property transfer would result in lots appropriate to the neighborhood.

Zoning Representative McGuire reviewed her memo to the Board dated October 13, 2015, regarding this case, which gave the following information: The average lot in the neighborhood, of 115 zoning lots surveyed, was 8,419 square feet. The median lot size was 9,559 square feet. 65 properties were larger and 48 properties were smaller than the proposed reconfigured Parcel A and Parcel B. The original lot 26-484-012 (22541 Albion) was 10,137 square feet. The original lot 26-484-013 was 5,068 square feet. Proposed sizes were: Parcel A, 7,440 square feet. Parcel B: 7,766.4 square feet. The minimum lot size for this district (RA-4) per Section 34-3.1.7.E. was 8,500 square feet.

Member Stevens clarified that the current property owner could not sell the smaller parcel as an individual parcel – that the two parcels under consideration this evening constituted one zoning lot.

Frank Prekelezaj, 5452 Centerbrook, West Bloomfield, MI., and owner of the property, was present on behalf of this application. He explained that he had purchased the lot intending to build two homes. He had 30 years experience as builder and had built in other locations in Farmington Hills. While the lots would be smaller than that required in the district, other parcels in the area were actually smaller especially in width. The houses he would build would improve the street. He had cleaned up the property. He distributed sample plans for homes on the parcels and asked for approval for the variance.

In response to a question from Chair Seelye, Mr. Prekelezaj said the homes would be built to sell, not rent. The houses would be 1200 to 1600 square feet each.

In response to a question from Member Lindquist, Mr. Prekelezaj said that he had acquired the property 2 years ago, and had purchased the entire parcel as one unit. A previous home on the property had been demolished before he purchased the property.

Zoning Representative McGuire called the Board's attention to the meeting minutes of February 14, 2006 that were included in the packets. At that meeting the ZBA had approved a similar, but not precisely the same, land transfer.

Member Rich asked if that motion had been granted in 2006, why was the request before the ZBA again?

Zoning Representative McGuire explained that this request was for a slightly different configuration. Additionally, nothing had gone forward regarding the 2006 case, and after 12 months, if nothing happened, the variance was voided.

Member Lindquist referred to Counsel Beckerleg's comments in the 2006 minutes regarding the "standard for approving a lot split." Could City Attorney Morita clarify this comment, since tonight's application was for a land transfer?

City Attorney Morita explained that while the terms "lot split" and "land transfer" seemed interchangeable, the City had different processes for each.

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

Member Barringer asked for further clarification regarding what constituted one zoning parcel under one owner. City Attorney Morita reviewed the ordinance language as stated above and history regarding two or more zoning lots of a single frontage with a single owner, where one portion did not meet zoning standards, that portion could not then be used as a single zoning lot. She explained that the City could not actually combine lot numbers without the request and permission of the property owner, but that contiguously owned lots still formed one parcel.

In response to a further question from Member Barringer, City Attorney Morita affirmed that the applicant could build a single home on the parcel as it existed today, with the 2 lot numbers, and the house could straddle the existing dividing lot line.

After further discussion regarding the legal authority of the ZBA in this matter, the requirements of the Ordinance, and the differences between a lot split and a land transfer in Farmington Hills processes, the following motion was offered:

MOTION by Lindquist, support by Barringer, in the matter of ZBA Case 10-15-5576, to GRANT the petitioner's request to reconfigure lots into two parcels, for 1) Parcel A - a 1,060 square foot variance to the required 8,500 square foot lot size requirement and 2) Parcel B - a 733.6 square foot variance to the required 8,500 square foot lot size requirement, 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 unreasonably prevent the petitioner from using the property for a permitted purpose, that being to construct homes on the property and utilize it for its highest use.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district, per the statistics provided by the Department, these lots would be somewhat larger than many of the lots in the district.
3. That the petitioner's plight is due to the unique circumstances of the property, in that this particular size split does render 2 lots of fairly equivalent size larger than many of the lots in the district.
4. That the problem is not self-created, the problem is somewhat created by the ordinance and the circumstances and timing of the acquisition of the property.

SUBJECT to the following conditions:

- The planned size of the split shall be as approved
- The proponent take note of the 100 year flood plain effecting the southerly lot, which will restrict the allowable buildable envelope
- A similar variance on this property was previously granted and the circumstances are identical

MOTION CARRIED 7-0

APPROVAL OF SEPTEMBER 8 2015 MINUTES

MOTION by Vergun, support by Rich, to approve the Zoning Board of Appeals meeting minutes of September 8, 2015, as submitted.

MOTION CARRIED 6-0-1 (Masood abstained)

PUBLIC QUESTIONS AND COMMENTS

There were no public comments.

ADJOURNMENT

MOTION by Stevens, support by Vergun, to adjourn the meeting at 11:24p.m.

MOTION CARRIED 7-0

Respectfully submitted,

James Stevens, Secretary
Zoning Board of Appeals

/ceh/cem