

**MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
CITY HALL – COUNCIL CHAMBER  
JUNE 11, 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 Anderson and Zoning Supervisor Randt**

**SITE VISIT JUNE 9, 2019**

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 Vergun, to approve the agenda as published.**

**MOTION carried unanimously.**

**NEW BUSINESS**

- A.       ZBA CASE:   6-19-5652  
          LOCATION:   31500 Ten Mile, 24205 Orchard Lake Road  
          PARCEL I.D.: 23-22-476-046/-047  
          REQUEST:   In order to utilize an existing building for a gas station/drive-through purpose in a B-3 Zoning District, the following variances are requested:  
                    1) A variance of 34.59 feet from the required 60 ft. front yard setback for the existing building and;  
                    2) A variance of two (2) drive-through stacking spaces to the minimum required 10 spaces, resulting in eight (8) proposed stacking spaces.  
          CODE SECTION: 34-4.35.1.A.; 34-5.2.12.L  
          APPLICANT: Jay Hammoud  
          OWNERS:    Ten Mile & Orchard Lake Properties/Jeffery Lesperance (24205 Orchard Lake Road); Chudnow Properties, L.L.C. (31500 Ten Mile)

Secretary Lindquist read the case.

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the background for this application for two variances as advertised, in order to utilize existing buildings for a combined gas station and drive-through restaurant in a B-3 Zoning District. The site was located on two properties at the corner of Ten Mile and Orchard Lake Road. Current uses were a small office building at 31500 Ten Mile and a vacant gas station at 24205 Orchard Lake Road. Materials supporting the application were in the Members' packets, and the overhead slides showed a site plan, a floor plan, and a rendering of the finished project.

Ghassan Abdelnour, GAV & Associates, 24001 Orchard Lake Rd., Suite 108A, Farmington MI was present on behalf of this variance request. Applicant Jay Hammoud, 641 Crescent Drive, Dearborn MI was also present, as was the potential owner of the coffee-house restaurant (Tim Hortons), Mike Jwaida, 1014 Joanne Court, Bloomfield Hills MI.

The applicants distributed additional renderings of the proposed project.

Mr. Abdelnour described the overall project, explaining that they wanted to develop this blighted corner by constructing a new gas station and coffee-house/restaurant. Because the site was old and nonconforming, the uses would require the variances as described. They had submitted a plan to the City which met most of the requirements. The gas station would be 3,600 square feet with a Tim Horton carry-out included.

The existing office building was set back 25.41 feet from 10 Mile Road; the drive-through use required a 60-foot front setback. Therefore they were asking for the 34.59 foot variance for the front yard setback, along with the variance to allow 8 stacking spaces, instead of 10.

Mr. Abdelnour said that anyone attempting to develop this corner would find it very difficult to meet zoning standards due to the characteristics of the existing site.

The applicants were working with Mike Jwaida, who owned several Tim Hortons franchises, and who had experience working with Tim Hortons facilities that were connected to a service station. In this type of situation, many customers would leave their car at the pump, go in to the store to pay for their gas and purchase other miscellaneous items, and place their Tim Hortons order. A drive-through with 8 stacking spaces should be adequate, as only in rare cases would there be as many as 10 cars in the stacking lane.

They were over 100 feet from the nearest residential property. Also, the order speaker utilized a sound system that did not carry far. The project would include significant landscaping along 10 Mile Road.

Chair Seelye asked if the previous gas station had received any variances in order to locate there. Zoning Supervisor Randt said the prior station needed variances for the canopies. The office building had been constructed prior to current setback requirements.

Chair Seelye said drive-through coffee shops were often backed up, especially in the mornings, and he was concerned that cars would back up on Orchard Lake Road. What was the Tim Hortons' policy when the back-up queue exceeded the stacking lane's capabilities?

Mr. Jwaida said he owned 6 Tim Hortons locations. The back-up in the queue depended on the level of service; they were knowledgeable regarding how to move cars through the queue. Again, many customers would be parked at the pump while they came inside to make their purchases and order coffee or food.

In response to a question from Chair Seelye, Zoning Supervisor Randt said information from the City Planner was in the Members' packets, along with a memorandum dated June 3, 2019 from Traffic Engineer Saksewski, which stated, in part:

*In the event that a variance is considered, the Engineering Division recommends that a provision be made that gives the City the ability to close the drive-through (ceasing all drive-through operations) in the event the vehicle queue length negatively impacts or obstructs access to the site or parking lot, impacts any adjacent land use, or the queue extends into the adjacent street or right-of-way.*

In response to a further question from Chair Seelye, Zoning Supervisor Randt said he was not aware of any instance of the City shutting down a drive-through.

Zoning Supervisor Randt asked Mr. Jwaida how his Tim Hortons locations reacted when the queue backed up and affected traffic on a major road.

Mr. Jwaida said that when customers ordered a big order at the speakers, they were advised to come inside and place the order. Other times drivers might be told to come directly to the window and place their order, in order to move them quickly through the queue. If a customer stayed at the window for a long time, they were instructed to pull up and their order would be brought to them. Other times drivers would be instructed to pull up and someone would go outside to take their order.

Zoning Supervisor Randt asked if there was a special area for cars to use when they were asked to pull away from the window or queue. What was the average time for someone to spend at the pickup window?

Mr. Jwaida said the average time for a car to be at the window was 30 seconds. If it was longer than that, serving staff were instructed to move the car.

Mr. Jwaida said when a Tim Hortons was part of a gas station store, the drive-through portion of the business represented 50% of the business, as opposed to free-standing stores, where the drive-through represented 70% of the business.

In response to a further question from Zoning Supervisor Randt, Mr. Jwaida said their system utilized an order speaker, with a single pickup window.

Member Rich asked if there would be an area inside for people to eat. Mr. Jwaida said there would be 2-3 tables, with 4 chairs each.

Member Rich said the information provided in the packets compared stacking needs of a full-service restaurant vs. a drive-through restaurant only. In the present instance, the restaurant would be a hybrid, neither full-service nor simply a drive-through.

Member Masood asked if the operation would still be viable if the drive-through variance was not granted. Mr. Abdelnour said that was unlikely, because of the cost of developing the two properties. Mr. Hammoud agreed: The gas station property was small; in order to have an economically viable project they needed both properties and uses as described.

Member King asked for further clarification regarding parking, especially as available parking related to the parking lot to the west, and the building to the north.

Mr. Abdelnour said the parking to the west would be shared with the building to the north.

Member King asked if it would be possible for overflow customers from the gas station to park in the western lot. Mr. Abdelnour said there would be parking in the western lot for overflow customers.

Member King said it looked to him like another 2-3 cars could be stacked and still be on the property. Mr. Abdelnour said they didn't want the stacking lane to interfere with gas station traffic.

Since two parcels were listed for the variance request, Member Masood asked if the variance would be for the 10 Mile address or the Orchard Lake Address, or would both be combined to a single parcel ID? Zoning Supervisor Randt said the variance would affect the 10 Mile address. Mr. Abdelnour said that both parcels would be combined eventually.

Mr. Abdelnour said that there would be significant landscaping along the 10 Mile frontage, with a pedestrian area including benches close to the building.

Chair Seelye opened the public hearing.

Semir Gjokaj said he was building a new house at 31680 Dohany Drive. He asked if the drive-through restaurant was meeting setback requirements from his property and meeting distance requirements from his home.

Zoning Supervisor Randt said requirements for setbacks from residential districts were met. He invited Mr. Gjokaj to contact the Zoning Office during the day for further information.

Member Lindquist clarified that Mr. Gjokaj was adjacent to the parking lot to the west of the property being discussed this evening.

Member Masood asked Mr. Gjokaj if he was for or against the requested variance. Mr. Gjokaj said he liked the plan and supported development at that corner. However, he was also concerned about noise from the drive-through; perhaps there could be some barriers if necessary. He also wondered if the parking lot would stay as a parking lot.

Chair Seelye said as far as he knew the parking lot would remain.

Dan Blugerman, 32521 Woodvale, Farmington Hills MI, speaking for himself and also Thomas Duke Real Estate, Farmington Hills, said he was representing the sellers of the 2 properties, and he also owned the Dry Clean Depot to the north on Orchard Lake Road. Dry Clean Depot owned the parking lot to the west. He explained that there would be a cross-access and shared circulation agreement, and also there was an existing easement for parking with the existing office building.

Zoning Supervisor Randt asked where the order speaker would be located. Mr. Blugerman said the speaker would be pointed directly north between the two buildings, thus providing a sound barrier there. Mr. Abdelnour added that the speaker would be more than 100 feet from any residential property.

Chair Seelye asked the hours of the gas station and restaurant. Mr. Hammoud said the hours would be 5 a.m. to 10 p.m. for both businesses.

Member Lindquist said there was an affidavit of mailing, with 9 returns.

Chair Seelye closed the public hearing and brought the matter back to the Board for discussion and a motion.

Member Rich said he didn't have a problem with the request for a setback variance, especially with the landscaping as shown. One of the goals identified by the City, including for this specific area, was to encourage more walk-in traffic. There had also been a lot of talk about having buildings closer to the street in order to make an area more welcoming, as opposed to businesses sitting beyond a concrete lot.

Member Rich said he was, however, concerned with potential car stacking. The Tim Hortons at 12 Mile and Farmington Road regularly had cars backed up to Farmington Road. He knew that the applicant wanted to move cars faster and had systems in place, but the question was: what happened if there was still a problem and a customer was asked to pull forward and wait. If the customer didn't want to do that, what process was followed?

Member Rich said the study presented by the applicants showed that for a full-service coffee shop, there was a 40% chance of having 10 or more cars in line. On the other hand, a simple drive-through resulted in a maximum of 7 cars in the stacking lanes. Tonight's project was a hybrid, with 8 stacking spaces proposed: 3 between the menu board and the pickup window, and 5 before the menu board. In order for those spaces to be adequate, there should be only limited inside seating provided.

Member Rich continued that it appeared there was additional room for stacking to go through the gas station toward Orchard Lake Road, especially since the properties would be commonly owned. There was a chance that the gas station might be negatively impacted, but that risk would be borne by the owner. There was a further slight chance the gas station might eventually close because Tim Hortons traffic made the pumps difficult to use; this was not a likely scenario however.

Member Rich supported the Engineering Division's recommendation that if it turned out that the applicant was wrong about the number of stacking spaces needed, they should bear the burden of having to shut down the drive-through until that situation could be resolved.

Member Lindquist said he shared similar concerns. Mr. Jwaida had had indicated they had an expected time for cars to be at the pickup window of 30 seconds; if that wasn't happening their staff were trained to move cars along by a variety of methods. However, other Tim Hortons had available spaces for cars to utilize if they moved out of the queue; this location did not have that option.

Member Lindquist was not concerned about the setback variance, except as the setback affected the stacking spaces. He noted that the Planning Commission had given tentative approval for this project, but he was concerned that they did not think about the process of moving cars quickly through the line.

Member King ~~thought it might be possible to reverse the last 4 parking spaces in the adjacent parking lot so they could become pull-off spaces,~~ said it would be possible to peel off those last four spaces in the adjacent parking lot and essentially reverse them so that they could become pull-off spaces from the Tim Horton's lot so there would be a place for vehicles to be directed to pull off, if that could be worked out with the owners of the two properties.

Member Vergun agreed with comments so far. He favored this proposal and thought it would be a beautification of both lots. If this project didn't go through because a variance was denied, probably any

other future development would also need variances. Regarding the stacking of drive-through cars, being in a fairly dense area, customers had many competing options, including other Tim Hortons locations as well as other businesses, and drivers would likely keep going to another location should the line get too long. It was a somewhat self-policing situation.

Seeing that discussion had ended, Chair Seelye indicated he was ready to entertain a motion.

Member Rich said he would offer separate motions for each of the variance requests.

**MOTION by Rich, support by Barnette**, in the matter of ZBA Case 6-19-5650, 1<sup>st</sup> request, to **GRANT** the petitioner's request for a variance of 34.59 feet from the required 60 foot front yard setback for the existing building, because the petitioners did demonstrate practical difficulties exist in this case in that they set forth facts which show that:

1. Compliance with the strict letter of the ordinance will unreasonably prevent the petitioner from using the property for a permitted purpose or will render conformity with the ordinance unnecessarily burdensome.
2. That granting the variance requested will do substantial justice to the petitioner as well as to other property owners in the district, especially given the City's stated intent of wanting to make areas including this particular intersection more walkable and inviting.
3. That the petitioner's plight is due to the unique circumstances of the property; the property is relatively cramped.
4. That the problem is not self-created. The building already exists but the nature of the project to be developed and other alternative developments would be hindered by the layout of the property as it exists.

**Motion carried 7-0.**

**MOTION by Rich, support by Masood**, in the matter of ZBA Case 6-19-5650, 2<sup>nd</sup> request, to **GRANT** the petitioner's request for a variance of two (2) drive-through stacking spaces to the minimum required 10 spaces, resulting in eight (8) stacking spaces, because the petitioners did demonstrate practical difficulties exist in this case in that they set forth facts which show that:

1. Compliance with the strict letter of the ordinance will unreasonably prevent the petitioner from using the property for a permitted purpose or will render conformity with the ordinance unnecessarily burdensome.
2. That granting the variance requested will do substantial justice to the petitioner as well as to other property owners in the district and is consistent with justice to such other property owners.
3. That the petitioner's plight is due to the unique circumstances of the property, for the reasons previously stated in terms of the size of the property and the orientation of the buildings.
4. That the problem is not self-created.

**With the following conditions:**

- No more than 12 seats be allowed within the structure, based on the study information that was provided to the Board that this proposed coffee shop is primarily a drive-through only. Based on the provided studies, the stacking requirement for a pure drive-through is substantially less than for a full-service coffee shop, and 8 stacking spaces should be sufficient.
- Because the petitioner should be the party who assumes the risk that they have accurately evaluated the need for the stacking spaces, the petitioner be required, with the City being allowed to enforce the requirement, to close the drive-through, which would involve ceasing all drive-through operations, in the event the vehicle queue length negatively impacts or obstructs access to the site or parking lot, adversely impacts any adjacent land use, or the queue extends into the adjacent street or right-of-way.

Member Masood said he would second the motion if hours of operation could be added to the list of conditions. Member Rich agreed to add that condition:

- Hours of service from 5 a.m. to 11 p.m.

Member Lindquist asked for the landscaping to be added to the list of conditions. Members Rich and Masood agreed to make that addition:

- Landscaping on the 10 Mile frontage be as presented in the site plan presented this evening.

Member Rich encouraged the applicant and the neighboring property owner to consider Member King's suggestion regarding structuring the property such that there would be an easily available pull-off area past the pickup window in the event that there was a need to have someone move away from the line in order to keep the queue moving.

The Chair recognized Mr. Blugerman.

Mr. Blugerman said they would follow up with the Planning Department regarding providing parking spaces so cars could pull out of the queue. He asked for clarification regarding the condition that the hours of service be from 5 a.m. to 11 p.m. Did this include the gas station or was it for the drive-through only? The gas station might like to stay open longer. Mr. Blugerman also asked what events would specifically require the drive-through to be closed down. If there was a single event, would the drive-through be shut down forever, or temporarily while traffic safety issues were resolved? What criteria would be used to shut down the drive-through operation?

Member Rich said the drive-through would be shut down temporarily unless the City determined that the stacking issues were a recurring problem, such that on an ongoing basis the stacking issues negatively impacted the health and safety of the area. The City did have the authority if it was an ongoing problem to enforce a permanent shut-down unless the situation could be resolved.

Member Rich asked Member Masood to answer the question regarding the hours of service, since he had asked to have that condition added to the motion.

Member Masood explained that his previous question regarding whether both uses/properties would be treated as one for the purposes of the variance requests informed his request for the condition to have the hours of operation apply to both uses.

Member Lindquist pointed out that the hours of service were consistent with what the applicant had stated earlier in the meeting.

**Motion carried unanimously.**

**PUBLIC QUESTIONS AND COMMENTS**

Boy Scout Edison Imel asked why the setback had to be 60 feet for the case just discussed.

Member Rich explained that historically communities had not wanted buildings too close to the street, and 60 feet was the setback established in the current ordinance. The thinking was changing, and some planners and communities believed that having buildings closer to the street encouraged walkability.

**APPROVAL OF MARCH 12, 2019 MINUTES**

**MOTION by Rich, support by Barnette, to approve the Zoning Board of Appeals meeting minutes of March 12, 2019.**

**Motion carried unanimously.**

**ADJOURNMENT**

**MOTION by Rich, support by Vergun, to adjourn the meeting at 8:29 p.m.**

**Motion carried unanimously.**

Respectfully submitted,  
Erik Lindquist, Secretary

/cem