

**SPECIAL MEETING MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
JULY 23, 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, Irvin (alternate), King, Masood, Rich, Seelye, Vergun**

Members Absent: **Lindquist**

Others Present: **Attorney Morita and Zoning Supervisor Randt**

SITE VISIT

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

APPROVAL OF AGENDA

MOTION by Rich, support by King, to amend and approve the agenda as follows:

- Add: New Business B. Officer Nominations

MOTION carried unanimously.

NEW BUSINESS

A. ZBA CASE: 7-19-5653
LOCATION: Northwest corner of Twelve Mile and Middlebelt Roads
PARCEL IDS: 23-11-477-109, -013, and -014
REQUEST: In an RC-2 Zoning District, the following variances are requested in order to build a proposed senior/assisted living facility:
 1) A variance of 9.4 feet from the minimum fifty (50) foot street setback from Twelve Mile.
 2) A variance of 2.1 feet from the minimum fifty (50) foot street setback from Middlebelt.
 3) A variance of ten (10) feet from the required ten (10) foot deep landscape area abutting the street (Middlebelt).
 4) A variance of five (5) feet from the required twenty (20) foot landscape buffer adjacent to RA districts.
 5) A variance of two (2) feet from the requirement of a two (2) foot high screening between parking lot and Middlebelt Road.

CODE SECTIONS: 34-3.5.G.; 34.3.5.V.; 34-5.14.6.; 34-5.14.5
APPLICANT: Harbor Retirement Development, L.L.C.
OWNERS: John P. Ginopolis Trust UAD; George L. Redilla

Vice Chair Vergun read the case.

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the background for this application for five variances, in order to construct a senior living facility at the northwest corner of Twelve Mile and Middlebelt Roads. Overhead slides included an aerial map of the property and the proposed site plan.

Charlie Jennings, Chief Development Officer, HRA Senior Living, 958 20th Place, Vero Beach FL, was present on behalf of this application for five variances. Julian J. Wargo Jr., PE., Zeimet Wozniak & Associates, 55800 Grand River Avenue, Ste. 100, New Hudson MI was also present.

Mr. Jennings explained that the 5 variance requests were all related to the same issue. They had been working with City staff for the past year regarding this proposal, as well as with the neighbors to the north and west of the project. They had a number of meetings with the neighbors regarding concerns about screening, landscaping, lighting, noise, etc. As a result of that process they had made changes to the site plan, including the addition of berms and landscaping, and increased the building's distance from the residential property lines. They had also met with City staff several times, and had met with the Planning Commission in June 2019. Before the Planning Commission meeting they believed they were in full compliance with all required setbacks, and only discovered shortly before the meeting that they were required to meet the setback from the future right-of-way. They had measured the right-of-way 50' from the center of 12 Mile and Middlebelt; however the future right-of-way required a setback 60' from the center of the roads.

The Planning Commission had approved the site plan with conditions, including the condition that the applicants receive appropriate variances from the ZBA.

Chair Seelye asked Attorney Morita to comment on the future right-of-way setback requirement.

Attorney Morita said that four of the requested variances related to the setback requirement. She directed the Commission's attention to privileged correspondence in their packets that addressed this issue.

In response to a question from Chair Seelye, Mr. Jennings said they had moved the buildings away from the residential property line in order to keep the existing arbor vitae in place. If they moved the building closer to the residential property, they would have to remove that mature landscaping and replant; it would be a long time before the buffer equaled what was there now.

Chair Seelye asked if the Engineering Division had reviewed this proposal. Zoning Supervisor Randt said they had, and further explained that the future right-of-way requirement was not new.

Chair Seelye asked if variance 5 reflected the fact that the required 2-foot high screening was in the right-of-way. Attorney Morita said that variances 1, 2, 3, and 5 were all related to the right-of-way. The plan actually provided all required landscaping; it just did not meet the future right-of-way requirement.

Member Barnette asked about the retaining wall on the north and west side. Mr. Jennings said the retaining wall had a varied height of approximately 2-5 feet. The purpose of the retaining wall was to provide additional screening for the neighbors to the north on Orion Court. The applicants had increased the grade with the retaining wall and berm, and planted trees on top of that, so that the trees would appear taller for the residents on Orion Court.

In response to a further comment from Member Barnette, Mr. Jennings showed a cross section of the bermed area and the landscape plan. He pointed out that the existing arbor vitae on the west side were almost 40 feet tall.

Member King asked if the requirements regarding the future right-of-way were published in the ordinance. Zoning Supervisor Randt said the future right-of-way requirements were given in the *Definitions* section of the ordinance:

Setback means the distance required to obtain minimum front, side or rear yard open space provisions of this chapter. Setbacks from a public street shall be measured from the existing or proposed right-of-way lines, whichever is greater.

Member King asked if a civil engineer would have the proposed right-of-way dimensions available to them. Zoning Supervisor Randt said they would have those dimensions.

Chair Seelye opened the public hearing.

Ibad Syed, 29546 Orion Court, said he represented the 10 Orion Court homeowners who were directly affected by this proposal. The residents were very happy with the privacy and serenity they currently had, and they preferred the status quo. They were concerned about the commercial nature of the senior living facility, and felt the construction of the facility would intrude upon their lifestyle and negatively impact the marketability of their homes. However, the City had shown strong favorability toward this proposed development.

Mr. Syed continued that Mr. Jennings had treated the Orion Court residents well, and had committed to provide privacy, especially along the northwest corner near Orion Court, with trees that were effectively 25 feet tall from the surface of Orion Court (5 foot berm and 20-foot tall trees). With this added commitment, Mr. Syed said this site plan would be the least invasive to their community, and he asked the Board to approve the site plan with the requested variances.

Seeing that no one else came forward to speak, Chair Seelye brought the matter back to the Commission, and asked if there was an affidavit of mailing.

Vice Chair Vergun said there was an affidavit of mailing, with 15 returns.

Member King said he was pleased with the effort the applicants had made to work with the community. He was, however, troubled with the lack of compliance with the ordinance setback requirement from the future right-of-way. It seemed that not meeting that requirement was an error discovered late in the process, and the applicants decided to push the proposed site plan through anyway. The site was being utilized to the maximum for this development, in an area that was generally gracious with its property development. Pushing the building to the south and east closer to the rights-of-way, along with the implications relative to screening the parking appropriately, were troubling to him. It was possible to make some minor design modifications to the building so that it complied with the Ordinance, without moving it to the north or west. He was opposed giving away an ordinance requirement just because it came to the attention of the applicant at the last minute.

In response to a question from Member Rich, Attorney Morita explained that regarding variance request 5, if the Board granted the request, the 2-foot screening would be at the 50-foot setback and not the 60-foot future right-of-way setback.

MOTION by Rich, support by Masood, in the matter of ZBA Case 7-19-5653, to GRANT the petitioner's request for:

- Request 1) A variance of 9.4 feet from the minimum fifty (50) foot street setback from Twelve Mile.
- Request 2) A variance of 2.1 feet from the minimum fifty (50) foot street setback from Middlebelt.
- Request 3) A variance of ten (10) feet from the required ten (10) foot deep landscape area abutting the street (Middlebelt).
- Request 5) A variance of two (2) feet from the requirement of a two (2) foot high screening between parking lot and Middlebelt Road.

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, as evidenced by the testimony from the homeowners' association.
3. That the petitioner's plight is due to the unique circumstances of the property, specifically the location of the existing vegetation, which if had to be removed and replanted would be detrimental; the current situation is unique.
4. That the problem is not self-created.

Also, based on the 1971 Michigan Supreme Court case *Gordon v Warren*, which found that a restriction which exists as a result of a proposed but not an existing right-of-way was deemed improper, variance requests 1, 2, 3, and 5 should be granted because the proposed setbacks do comply with all existing rights-of-way.

With the following condition:

- Compliance with the landscape plan as presented.

Chair Seeley asked for a roll call vote.

Barnette	yes
Irvin	yes
King	no
Masood	yes
Rich	yes
Vergun	yes
Seelye	yes

Motion carried 6-1 (King opposed).

MOTION by Rich, support by Masood, in the matter of ZBA Case 7-19-5653, to GRANT the petitioner's request for:

- Request 4) A variance of five (5) feet from the required twenty (20) foot landscape buffer adjacent to RA districts.

because the petitioners did demonstrate practical difficulties exist in this case as described in the motion granting requests 1, 2, 3, and 5 above, in that:

1. Compliance with the strict letter of the ordinance 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, as evidenced by the testimony from the homeowners' association.
3. That the petitioner's plight is due to the unique circumstances of the property.
4. That the problem is not self-created.

With the following condition:

- Compliance with the site and landscape plans as presented.

While Member Rich did have some concern regarding the loss of buffering space, the buffering that was being provided was located in the right place and would provide sufficient buffering, and the neighbors agreed with the proposed landscape plan.

Member Masood added that the unique circumstances of the property included its irregular shape and the fact that it was a corner lot, and the applicant did work with the neighbors to accommodate the existing foliage and arbor vitae that were on the site.

Chair Seeley asked for a roll call vote.

Barnette	yes
Irvin	yes
King	no
Masood	yes
Rich	yes
Vergun	yes
Seelye	yes

Motion carried 6-1 (King opposed).

B. Officer Nominations

City Attorney Morita explained that the City Council had implemented changes so that no member could hold an office longer than two years, and further that the process was to nominate officers this evening, and vote on the nominations at the August meeting.

Member King nominated Daniel Vergun for chair. Member Vergun accepted the nomination.

Member King nominated Eric Lindquist for vice chair. (Member Lindquist was absent this evening.)

Member Vergun nominated Azam Masood for secretary. Member Masood accepted the nomination.

PUBLIC QUESTIONS AND COMMENTS None.

ADJOURNMENT

MOTION by Rich, support by Vergun, to adjourn the meeting at 8:10 p.m.

Motion carried unanimously.

Respectfully submitted,
Erik Lindquist, Secretary

/cem