

MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
CITY HALL – COUNCIL CHAMBER  
MARCH 13, 2018

**CALL MEETING TO ORDER**

Chair Seelye called the meeting to order at 7:30p.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, King, Lindquist, Masood, Rich, and Seelye

Members Absent: Vergun

Others Present: Attorney Morita and Zoning Division Supervisor Randt

**SITE VISIT MARCH 11, 2018**

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

The Sunday site visit begins at 9:00a.m. at City Hall. It is an advertised open, public meeting under the Open Meetings Act, is only for informational purposes; the Board members abstain from any action, hearing testimony, or any deliberations.

**APPROVAL OF AGENDA**

**MOTION** by Rich, support by King, to approve the agenda as published.

**MOTION CARRIED 7-0.**

**OLD BUSINESS**

- A. ZBA CASE: 2-18-5627  
LOCATION: 36025 W. Fourteen Mile  
PARCEL I.D.: 23-05-201-020  
REQUEST: A 3.75 foot variance to the 3 foot height limit is requested in order to permit a fence/gate and associated pillars/appurtenances 6.75 feet in height in the front yard of an RA-1 zoned property.  
CODE SECTION: 34-5.12  
APPLICANT/OWNER: Jayanth Koneru

Utilizing overhead slides, Zoning Division Supervisor Randt presented an aerial view of the property, photos of the property with the gates in place and photos of the gate.

Jayanth Koneru, 36025 14 Mile Road, explained he is here for a second time, he came in November and after that meeting he left for India for 3 months as his father is sick. He stated the reason he applied for the variance was because he had asked for a fence and the City told him he cannot have a fence more than 3 feet in height, and since he did not think a 3 foot fence would look good for his house, he spent a lot of money on putting trees around the house and a gate at the driveway to prevent trespassers, as he is on a main road and out of the country often.

Dr. Koneru stated that he did not understand that a gate and a fence was the same in terms of the City's requirements, and that is why he ordered the 8 foot by 5 foot gate. He noted that when he was before the Board before it was brought to his attention that the gate was taller than 5 feet so he has reapplied to get permission to keep the gate at its current height. He stated that he would give the gate code to the Police and Fire Department.

Chair Seelye questioned if a 3 foot high gate would stop cars from entering the driveway. Dr. Koneru responded that with the height of his house a 3 foot gate does not look good, so that is why he got a 5 foot gate and in his opinion a gate is different from a fence.

Chair Seelye asked why he continued to build when he was turned down for a permit. Dr. Koneru responded that he told his builder that if they were putting in a fence taller than 3 foot they would need to apply but they were not installing a fence, only a gate. He stated that he did not get turned down as he did not apply.

Zoning Division Supervisor Randt commented that the Zoning Inspector informed the applicant that it should not be built until it is settled by the Zoning Board of Appeals, and they continued to build the pillars and gate after receiving a notice.

Dr. Koneru stated he did not know that.

Chair Seelye asked the applicant to explain to the Board how this issue is not self-created. Dr. Koneru responded that he did not apply for any permits, all of that was taken care of by the builders.

Chair Seelye opened the public portion of the meeting. There being no public comments, Chair Seelye closed the public portion of the meeting.

Member Lindquist confirmed there was an affidavit of mailing on file with 0 returned mailers.

Chair Seelye asked staff if the Engineering Department had any issues with the gate. Mr. Randt responded that they did not, as it was off the right-of-way and on private property.

Member Masood mentioned the letter from the Homeowners Association stating that they are not in support of the variances.

**MOTION** by Masood, support by Lindquist, in the matter of ZBA Case 2-18-5627, to **DENY** the petitioner's request for a 3.75 foot variance to the 3 foot height limit is requested in order to permit a fence/gate and associated pillars/appurtenances 6.75 feet in height in the front yard of an RA-1 zoned property; because the petitioner did not demonstrate practical difficulties exist in this case, he did not show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose, a single family residence.
2. Granting the variance requested does substantial justice to the petitioner as well as to other property owners in the district.
3. The petitioner's plight is due to the unique circumstances of the property.
4. The problem is not self-created; further, the petitioner or contractor the petitioner had hired

continued to build after the permit was denied and there is supporting evidence from Homeowners Association that they do not agree with the variances as stated.

**MOTION CARRIED 7-0.**

Chair Seelye informed the applicant to contact the Building Department to see what needs to be done with the gate.

**NEW BUSINESS**

- A. ZBA CASE:** 3-18-5629  
**LOCATION:** 25879 Middlebelt  
**PARCEL I.D.** 23-23-226-004  
**REQUEST:** In order to permit a 7 foot high commercial fence in an RA-1 Zoning District, the following variances are requested:
1. A 1 foot variance from the requirement that fences not exceed 6 feet in height in the side and rear yards;
  2. A 4 foot variance from the requirement that fences not exceed 3 feet in height in the front yard setback; and
  3. A 53 foot variance from the required 40 foot front yard setback from the proposed right-of-way.
- CODE SECTION:** 34-5.12.C.i.; 34-5.12.C.ii.; 34-2.2  
**APPLICANT:** Consumers Energy  
**OWNER:** Consumers Energy

Utilizing overhead slides, Zoning Division Supervisor Randt described the location of the property, presented an aerial view of the property, photos of the existing fence and noted that the fence encloses a lot that contains Consumers Energy equipment.

Attorney Morita explained that the current ordinance states that the setback has to be from the proposed right-of-way, however, because of recent developments in case law, she has been advising the Board that they should be measuring from the existing right-of-way, not from the proposed right-of-way and even though it has been advertised for a 53 foot variance, the variance that they are recommending that the Board grant would be from the existing right-of-way. She stated that when looking at this case, it has to be considered from the existing right-of-way. She added that this is one of the issues her office is looking at addressing in the future. She noted that there is a letter in the Board's packet from Mark Stec that addresses the differences in the right-of-way.

Chair Seelye asked if the Board has to grant the 53 foot variance. Attorney Morita responded that technically the Board does as the ordinance right now calls for a variance from the proposed right-of-way as opposed to the existing right-of-way.

Member King questioned if the fence will be in the same location either way. Attorney Morita responded that the fence will not move it is just a matter of how the right-of-way is measured; they cannot hold property owners to the proposed right-of-way that they do not own and the County has not taken, they can only hold them to the existing right-of-way.

Joe Lawson, Consumers Energy representative, One Energy Plaza, explained that the setback variance they are requesting is for a specific reason, as seen in the photos, there are valves that are in the future right-of-way and in order to keep the site secure and safe, the valves need to be in a fenced in area. He stated that the second variance in the front yard, 3 foot fence versus a 7 foot fence, once again is a safety

and reliability issue for Consumers as obviously a 3 foot fence would not do much in the way of site security as someone could hop the fence and the 7 foot fence would lend the site to be more secure. He added that a 7 foot is a typical fence for Consumers at these regulator stations for security purposes.

Mr. Lawson explained that the contractor got ahead of himself with the wrong set of plans, in relation to the barbed wire apertures shown in the photos, and they have no intent on installing barbed wire on this site and if this were to be approved, the apertures would be removed and the fence cut down to the proper height. He added that they are trying to provide safe and reliable service as well as keeping the site secure is their key concern, as it is a natural gas regulator site.

Chair Seelye asked what exactly happens on this site. Mr. Lawson responded that they knock down the pressure of the gas; there is a medium pressure gas main that runs through the area and this regulator station knocks it down to a distribution pressure that can go to homes and businesses.

Chair Seelye noted there was burner on when he visited the site and it went from 400 degrees to 800 degrees in a couple minutes.

Corbin Holmes, One Energy Plaza, explained that the burner is to heat up the gas; as gas expands it cools down and they have to heat it up otherwise it can build up ice balls inside the building. He added that this process varies from site to site as to how often the burner kicks on.

Chair Seelye asked if the intention was to run the 7 foot fence all the way around the property. Mr. Lawson responded that was correct.

Chair Seelye noted that on the south side the fence was black and asked if it was possible to have the entire fence black coated, since it blends in better. Mr. Lawson responded that they would be willing to do that.

Chair Seelye asked if the barbed wire pegs will come down along with the corner posts being lowered to 7 feet. Mr. Lawson responded that was correct.

Zoning Division Supervisor Randt asked why there could not be any type of greenery or arborvitaes planted in front of the fencing. Mr. Lawson responded that the reason they do not plant greenery is for security purposes, as they want the site visible to the inside from the street in case someone did get inside. He added that they do not plant anything on the inside because it becomes fuel if there were an issue inside.

Mr. Lawson commented that as with other utilities such as water and sewer, you do not want to plant trees that will possibly have roots that interfere with the underground piping.

Member Rich asked how these valves initially come to be as close as they are to the right-of-way. Mr. Lawson responded that there is a code which they have to construct under; there is a main along Middlebelt Road and when the pipes come up, they have to be so far away from the regulator itself so they are just following the proper code.

Mr. Holmes explained that they follow the Michigan Gas Safety Code which specifies that they are supposed to have the inlet and outlet valves at a reasonable distance away from the regulator valves, so that if it is engulfed in flames they can safely shut it off.

Member King questioned how long the site has been in this location. Mr. Holmes responded that he was unaware and most of their facilities are rather old, 30 plus years.

Chair Seelye asked if the valves were new. Mr. Holmes responded that the valves are new inside the building.

Mr. Lawson noted that there is quite a bit of work right now going on in Farmington Hills for Consumers as there is a big push to overhaul these old buildings.

Member Rich asked staff if the adjacent property, which is zoned office, is currently a park, if it was owned by the City and if there are plans for development. Zoning Division Supervisor Randt responded that he did not know who owns the property.

Chair Seelye informed the Board that the property in question is a City park.

Member Lindquist questioned what sort of fence was here before, if there was a fence. Mr. Lawson responded that he did not know.

Mr. Holmes commented that he began working for Consumers a year ago and there were no fences there at that time, only the black fence near the creek.

Member King noted that he has concerns with the fence being consistent, and asked if Consumers would be willing to have a consistent 7 foot high black fence completely around the perimeter of the property if the variance was to be granted. Mr. Holmes responded yes, and asked if the Board would be opposed to galvanized.

Member Lindquist stated that he recalls that the existing black fence is shorter than 7 feet and asked if that would be replaced. Mr. Holmes responded that originally it was not going to be replaced but they can replace it if consistency is a concern for the variance.

Member Lindquist questioned that if the lower existing fence height is sufficient, then why does the rest of the fence have to be 7 feet. Mr. Holmes responded that on the other side of that fence there is a creek and you would have to go up about 15-20 feet to climb the fence.

Mr. Randt asked if there was anything they could make work other than a 7 foot high fence. Mr. Holmes responded that Consumers standard design is a 7 foot barbed wire fence, obviously they are foregoing the barbed wire in Farmington Hills but the 7 foot fence is more consistent along their standard design.

Mr. Holmes stated that the difference between a 3 foot fence and 4 foot fence is marginal in terms of security, but if someone wanted to jump it they could but with a 7 foot fence you cannot jump over it, so the difference is significant in his opinion.

Member Irvin questioned the safety concerns they have with someone scaling the fence, as he is sure there is some kind of lock on the valves. Mr. Holmes responded that the valves are locked but besides that there are additional potential liabilities with people being injured or hurt on their property that they would like to avoid and this is one way to secure the site, prevent vandalism, loitering and destruction of property.

Member Irvin mentioned that they just denied someone a gate in their yard for the same reason.

Member Lindquist asked what other security measures are in place onsite. Mr. Holmes responded that cameras vary from site to site and they have a central corporate command that they call when they go to particular sites; however this site he does not believe have any cameras.

Chair Seeley asked if they have had any vandalism on a site like this. Mr. Holmes responded not to his knowledge but he has been to locations that have been trashed.

Chair Seelye opened the public portion of the meeting. There being no public comments, Chair Seelye closed the public portion of the meeting.

Member Lindquist confirmed there was an affidavit of mailing on file with 7 returned mailers.

Member Barnette commented that he has spent most of his life working around industrial complexes and this is more of what he would expect to see on a commercial or industrial site, and basically what they are trying to do is to protect their property from vandalism. He added that particularly in today's world, we do not know what kind of attack might take place and it seems reasonable that a 7 foot fence would be installed on this property.

Chair Seelye noted that he agreed with Member Barnette and he would like to see a uniform fence with a black coating.

**MOTION** by Rich, support by Lindquist, in the matter of ZBA Case 3-18-5629, to **GRANT** the petitioner's request for 1) A 1 foot variance from the requirement that fences not exceed 6 feet in height in the side and rear yards, 2) A 4 foot variance from the requirement that fences not exceed 3 feet in height in the front yard setback; and 3) A 53 foot variance from the required 40 foot front yard setback from the proposed right-of-way; because the petitioner did demonstrate practical difficulties, specifically:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome; specifically they have a valve system for regulating natural gas usage and there are certain safety concerns associated with that and that is a burden they are trying to mitigate with use of the fence.
2. That granting the variance does substantial justice to the petitioner as well as to other property owners in the district; with respect to the other property owners, it prevents people from going onto the site and interfering with potential gas usage which would be of harm to others in the district.
3. That the petitioner's plight is due to the unique circumstances of the property; specifically the location of the gas mains, how they were originally placed, the location of the property given that it is on a main road bordering what is currently zoned for office use such that anyone looking at the property would not be able to tell whether it was part of the office district or the residential district and there being a stream on the south side of the property that acts as a natural dividing line between the rest of the residential area, with other residential areas to the west being set far back from the property such that the fence would not interfere with their use.
4. That the problem is not self-created; the applicant is faced with compliance with the various regulations that apply to the placement of this type of gas regulating equipment and they need to provide protection for that usage in the location where this facility is currently located.

**SUBJECT** to the fence being uniform, no taller than 7 feet and that it is galvanized and coated black so that it blends in better with the surrounding background.

**MOTION CARRIED 6-1 (Masood opposed).**

**PUBLIC QUESTIONS AND COMMENTS**

Eugene Cary, 30083 Kimberly Ct, commented that it might be a good idea for Consumers Energy to have a motion sensor camera on site so if someone or something got onto the site they would have some kind of warning.

Discussion was held regarding the Zoning Board of Appeals training taking place on April 16, 2018.

**APPROVAL OF FEBRUARY 13, 2018 MINUTES**

**MOTION** by Rich, support by King, to approve the Zoning Board of Appeals meeting minutes of February 13, 2018.

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

**ADJOURNMENT**

**MOTION** by Barnette, support by Irvin, to adjourn the meeting at 8:17pm.

**MOTION CARRIED 7-0.**

Respectfully submitted,

Erik Lindquist, Secretary  
Zoning Board of Appeals

/ceh