

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
FARMINGTON HILLS CITY HALL
31555 W. ELEVEN MILE ROAD
FARMINGTON HILLS, MI
JANUARY 09, 2024 – 7:30 PM**

1. CALL MEETING TO ORDER

Chair O’Connell called the meeting to order at 7:38pm and made standard introductory remarks explaining the role of the ZBA and the formal procedures of the meeting.

Board Members scheduled a site visit on January 7, 2024, and may also have visited the site independently. No action was taken at the site visit.

2. ROLL CALL

Members Present: Collins, Irvin, Khan, Lindquist, O’Connell, Rich, Vergun

Members Absent: None

Others Present: City Attorney Morita, Zoning Representative Grenanco, Recording Secretary McGuire

3. APPROVAL OF AGENDA

MOTION by Vergun, support by Lindquist, to approve the agenda as submitted.

Motion carried unanimously by voice vote, 7-0.

4. NEW BUSINESS:

A. ZBA CASE: 1-24-5733

LOCATION: 34801 Old Homestead Drive, Farmington Hills, MI 48335

PARCEL I.D.: 23-21-156-011

REQUEST: In an RA-1 zoned district, in order to install a four-and-a-half (4.5) foot tall fence in the exterior side yard, the following variances are requested:

1. A variance from the prohibition that fences over three (3) feet are not permitted to extend into an exterior side yard past the side of the house, to permit a four-and-a-half (4.5) foot tall fence to extend six (6) feet into the exterior side yard.

2. A height variance of one-and-a half (1.5) feet to the maximum three (3) foot high limit allowed, in order to build a four-and-a-half (4.5) foot high fence in the exterior side yard.

CODE SECTION: 34-5.12 (C)(i) and (ii)

APPLICANT/OWNER: Ryan and Jenna Sharpe

Zoning Representative Grenanco described the facts of the case. The property is located north of Grand River and east of Drake; a site plan and background documentation were in the packets.

Ryan Sharpe, 34801 Old Homestead Drive, was present on behalf of this request for two variances in order to install a four-and-a-half foot tall fence in an exterior side yard. The property is a corner lot. The homeowners would like to replace a fence around a swimming pool and were

requesting to place the fence 6' in the exterior side yard toward Witherspoon Street. A state law requires that the fence be 4' high if it is around a pool, but the City only allows a 3' high fence in any exterior side yard. The property owners do need variances if they are not going to have the fence flush with the house; they are requesting to put the gate out toward Witherspoon. Aerial photos show what exists and site plans and other documentation show what they are requesting to do.

Mr. Sharpe distributed additional materials to the Board that he said demonstrated similar homes in the applicants' neighborhood where variances had been granted to install a swimming pool on a corner lot. The materials included an Independence Hills Subdivision map showing the location of corner lot properties with fences, and photographs of those properties.

Mr. Sharpe made the following points:

- The applicants were seeking a variance to permit installation of a 4.5' tall fence around their pool and extend it 6' toward Witherspoon Street.
- The applicants understood that current ordinances restricted fencing in excess of 3' tall or fencing near the front of the lot.
- The existing fence was not in compliance with current ordinances with respect to location, height, and construction materials.
- Compliance with the ordinance would unreasonably prevent the applicants from using their property for the permitted purpose, and would inhibit safe use of the property by limiting the walkway around the pool to less than 3'.
- Compliance with the ordinance would potentially require a secondary 3' tall fence to surround the existing concrete patio, and could delay replacement of the existing, non-compliant fence.
- Granting the variance would provide substantial justice to the applicants because a 4.5' tall fence would meet the code for the minimum fence height for surrounding a pool and was similar to other homes in the neighborhood; the location of the fence in the exterior side yard was also consistent with other homes in the neighborhood, including 25286 Witherspoon Street and 25463 Witherspoon Street, which had been granted variances.
- The property was unique because it was a corner lot with an exterior side yard facing one of two street frontages.
- The property butted up against a condo association with private roads, and a barrier separated the road to the west of the applicants' property from the condo association, creating a dead end street. The replacement fence would not block motorists' line of sight.
- The problem was not self-created because the applicant did not create pool fencing requirements; and the pool, slide, related equipment, fence, and concrete patio were in place when the applicants purchased the home.

In response to questions, Mr. Sharpe gave the following further information:

- The applicants intended to extend the location of the current fence two feet from the existing noncompliant location on the west and south sides in order to install a larger gate to better access the pool property, and provide more room for equipment and the walkway around the pool which was currently narrow.
- The existing fence was made out of wrought iron cemented into the concrete patio which was uncommon and difficult to remove, and there were existing drainage issues. The applicants

- had cleared trees and brush surrounding the fence in the backyard and would use the additional space to make repairs and future patio replacements.
- The existing fence was between 3.5' to 4' high.
 - Half of the existing fence was made of wrought iron, and the other half was made of wood with a flat top. The wood portion was less than 4' tall.
 - The pool ranged from 3' to between 8'-9' feet deep and was a 25,000 to 30,000 gallon in-ground pool.
 - The existing gate and the replacement gate were located at the shallow end of the pool. Additional gates for equipment access would be located at the deep end of the pool.
 - The existing fence was out of code, and would be replaced with a fence that was in code with the exception of the requested variance.

Member Rich recommended that the applicants check whether the additional access gates violated building code, but noted that the issue was unrelated to zoning,

Public Comment

Rob Voight said he represented the homeowners' association, and that the homeowners' association board had reviewed the proposed plan and voted unanimously that the plan met the association's restrictions which were primarily tied to style. He said the plan would not impact any of the applicants' neighbors, and was an improvement to the existing fence. The homeowners' association supported the variance.

Secretary Vergun reported that there was an affidavit of mailing, with three returns.

Board discussion and/or motion

MOTION by Collins, support by Lindquist, in the matter of ZBA Case 1-24-5733, 34801 Old Homestead Drive, Parcel I.D. 23-21-156-011, that the petitioner's request for the following variances in order to install a four-and-a-half (4.5) foot tall fence in the exterior side yard be granted:

- 1. A variance from the prohibition that fences over three (3) feet are not permitted to extend into an exterior side yard past the side of the house, to permit a four-and-a-half (4.5) foot tall fence to extend six (6) feet into the exterior side yard.**
- 2. A height variance of one-and-a half (1.5) feet to the maximum three (3) foot high limit allowed, in order to build a four-and-a-half (4.5) foot high fence in the exterior side yard.**

because the petitioner did demonstrate that the requirements for a special exception 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 or would render conformity with the ordinance unnecessarily burdensome.**
- 2. That granting the variance as 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, in**

- that this is a corner lot with essentially two front yards. State law has a requirement for a four-and-a half foot fence and the current fence is not up to code, and this will bring the fence into compliance.**
- 4. That the problem is not self-created. The applicants bought the home with a pool and cement patio, and did not create this problem themselves.**

With the following condition:

- **The construction of the fence will match the design and location as presented in the application documents.**

Motion passed unanimously by voice vote, 7-0.

B. ZBA CASE: 1-24-5734

LOCATION: 30974 Glenmuer Street, Farmington Hills, MI 48334

PARCEL I.D.: 23-03-126-009

REQUEST: In an RA-1A zoned district, in order to install a seven-and-a-half (7.5) foot tall fence in the rear yard, the following variance is requested: A height variance of one-and-a-half (1.5) feet to the maximum six (6) foot-high limit allowed.

CODE SECTION: 34-5.12 (C)(i)

APPLICANT/OWNER: Brian Moore

Zoning Representative Grenanco described the facts of the case. The property is located south of Fourteen Mile Road between Farmington and Orchard Lake Roads. A site plan and background documentation were in the packets. The property was just under 2 acres, and is allowed a 6' high fence. A property that is over 2 acres is allowed to have an 8' fence. The applicant would like to construct a 7.5' tall fence. There are photos in the packets showing the proposed fence location.

Brian Moore, 30974 Glenmuer, was present on behalf of this request to install a 7.5' tall fence where a maximum 6' tall fence is allowed.

Mr. Moore made the following points:

- His property is on a deer migratory path. He had attempted to mitigate damage from the deer for six to seven years using unimposing solutions and also metal t-posts and commercial grade plastic fencing.
- The deer are destructive and not afraid of people, and the applicant had replaced upward of three dozen trees over the years.
- He did not want to install a chain link fence.
- A company that made deer-specific fencing recommended a welded wire mesh fence that prevented damage from deer and other animals.
- The proposed fence was a semipermanent, no cement solution. 30" posts would be driven into the ground, into which 7.5' tall support posts would be inserted. The mesh would be rolled out and wired to the posts.
- The manufacturer said that a 7' tall fence might be sufficient, but Mr. Moore's experience was that a 7.5' high fence was needed.
- The properties to the west and north of the applicant were less than two acres where 6' fences would be allowed, and the properties to the south of the applicant were more than two acres where 8' fences would be allowed.

In response to questions, Mr. Moore gave the following further information:

- Deer could easily jump 6' high fences.
- He had created open space in his yard by clearing brush, but he was reestablishing a privacy border by putting in trees.
- He thought that a 7.5' fence was sufficient to deter deer because he was establishing trees on the inside of the fence and the deer would not have an open path to run and jump over the fence.
- He had called the City's deer management contact multiple times, but the City had not done anything to reduce the deer population. He thought changing the migratory path of deer was the City's problem. He was trying to protect his property.
- A substantial number of trees in the area were lost due to disease, DTE trimming/cutting, and road construction. Destruction by deer prevented new growth, limiting the tree canopy in the area. His neighbors were trying to shield their own trees from deer; some had simply given up.
- He wanted to enclose his property on all sides except the front road in order to completely exclude deer from his property.
- The deer were a nuisance that prevented him from enjoying his property the way he wanted to.
- He did not know how the fence would affect his neighbors. Some people liked the deer and some didn't. He agreed that the fence could adversely affect his neighbors.

Board comments:

- Member Rich doubted that the fence would accomplish its stated purpose. Per the manufacturer's materials, an 8' fence is necessary where there are established deer paths, areas including something deer are attracted to, and where there are large areas. All these characteristics describe this property. He was also concerned about the Board approving a fence that changed migratory patterns of the deer, theoretically forcing them into other people's yards. He was concerned about the Board approving a fence in an area where there are no fences.
- Member Vergun did not think the four criteria for granting a variance had been met. The property did not have unique circumstances. If the variance was granted, perhaps many neighbors would also seek a similar variance. Compliance with the ordinance would not unreasonably prevent the petitioner from using the property for its permitted purpose, that being a personal residence. And while the applicant had to replace many trees in his desire to have a well-landscaped property, those were personal decisions that other people might not have made. At the end of the day, this is a residence.
- Member Lindquist pointed out that the applicant's circumstances apply to every other property owner in this subdivision. Member Lindquist questioned whether the second criteria was met, that granting the variance would do substantial justice to the petitioner as well as to other property owners in the district. Granting the variance would redistribute the problem to adjacent property owners, and negatively affect them. The applicant could have a 6' fence without seeking a variance, and a 6' fence would probably relieve 80% of the problem.

Mr. Moore said he would not put in a 6' fence because the cost of a 6' chain link fence, for example, would be \$42,000 to \$60,000, and would give limited benefit.

Mr. Moore spoke to the increase of deer in the area, and the lack of action by the City and County to provide any mitigation.

Public Comment

None.

Secretary Vergun reported that there was an affidavit of mailing, with no returns.

MOTION by Irvin, support by Vergun, in the matter of ZBA Case 01-24-5734, 30974 Glenmuer Street, Parcel I.D. 23-03-126-009, that the petitioner's request for a variance in order to install a seven-and-a-half (7.5) foot tall fence in the rear yard be denied, because the petitioner did not demonstrate practical difficulties exist in this case in that he did not 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 or would render conformity with the ordinance unnecessarily burdensome.**
- 2. That granting the variance as 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, or be more consistent with justice to other property owners.**
- 3. That the petitioner's plight is due to the unique circumstances of the property; indeed the petitioner's plight is not due to unique circumstances of the property.**
- 4. That the problem is not self-created.**

Granting the variance is not necessary and would not be fair to anyone else in Farmington Hills that deals with deer on a daily basis.

Motion discussion:

Member Lindquist said he will support the motion. He appreciated the petitioner's plight and problem. However, granting this variance would not be a silver bullet solution. The extra 1.5' in height could impact the other neighbors on the block who have almost no fencing even though fencing is allowed, and granting the variance would permit the only fence in the neighborhood to be a noncompliant fence.

Motion passed unanimously by voice vote, 7-0.

5. PUBLIC QUESTIONS AND COMMENTS:

None.

6. APPROVAL OF MINUTES December 12, 2023

MOTION by Rich, support by Khan, to approve the December 12, 2023 meeting minutes as submitted.

Motion passed unanimously by voice vote, 7-0 .

7. ADJOURNMENT

MOTION by Vergun, support by Irvin, to adjourn the meeting.

Motion approved unanimously.

The meeting adjourned at 8:28pm.

Respectfully submitted,
Daniel Vergun, Secretary

/cem