

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
FARMINGTON HILLS CITY HALL – COUNCIL CHAMBER
31555 W. ELEVEN MILE ROAD
FARMINGTON HILLS, MI
January 10, 2023 – 7:30 PM**

1. CALL MEETING TO ORDER

Chair Lindquist called the meeting to order at 7:35 P.M.

2. ROLL CALL

Members Present: Collins (alternate), Khan (alternate) Lindquist, O’Connell, Vergun

Members Absent: Irvin, King, Masood, Rich

Others Present: City Attorney Morita, Zoning Supervisor Randt, Recording Secretary McGuire

3. APPROVAL OF AGENDA

MOTION by Vergun, support by O’Connell, to approve the agenda as published.

Motion carried by voice vote.

Chair Lindquist made standard introductory remarks explaining the role of the ZBA and the formal procedures of the meeting.

Board Members held a site visit on January 8, 2023, and may also have visited the sites independently. No action was taken at the site visit.

4. NEW BUSINESS:

A. ZBA CASE: 01-230-5722
LOCATION: 29800 Grand River Avenue
29900 Grand River Avenue
30000 Grand River Avenue
PARCEL I.D.: 23-35-201-009
23-35-228-028
23-35-228-029
23-35-228-025

REQUEST: In order to construct a drive-in restaurant in a B-3 zoning district adjacent to an RA-4 zoning district where the drive-in use is not separated from the lot by a major or secondary throughfare, the following use variance is requested: A use variance to permit a zoning lot to be occupied by a drive-in use abutting an RA zoning district where the zoning lot is not separated from the RA zoning district by a major or secondary throughfare.

CODE SECTION: 34-4.35.1.C
APPLICANT: Nicholas Shango, West River Shopping Center, LLC
OWNER: West River Shopping Center, LLC
28777 Northwestern, LLC

Chair Lindquist noted that as this is a request for a use variance, the case will need five votes to be granted, and with five members present, the vote will have to be unanimous.

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property in question is located north of Grand River, west of Middlebelt. The proposed location of a Starbucks restaurant was shown on the submitted site plan. Views of the overall existing shopping center were also provided.

Applicant presentation

David Landry, 37000 Grand River Ave. Ste 200, Farmington Hills, was present on behalf of the West River Shopping Center and the applicant, Nicholas Shango, who was also present. Mr. Landry provided the following information:

- The applicant was requesting a use variance in order to allow a drive-thru Starbucks restaurant adjacent to a residential area.
- The property in question was part of a large shopping center. There was a former bank building in the southeast corner of the site, with an already existing drive-thru. They were asking to convert the bank building into a Starbucks restaurant.
- The B-3 zoning district allows as a principal permitted use a drive-thru for banks, and also allows as a principal permitted use a drive-thru for restaurants, subject to Planning Commission approval. With respect to restaurants, the ordinance states a drive-thru shall not be adjacent to residential unless there is separation by a thoroughfare.
- In this case, the following elements separated the building from the residential use:
 - There was 49' between the bank building and the residential area, and within that 49' feet was a 6' masonry wall, landscaping with trees, and then an additional 16'.
 - They were proposing a 5' wide additional landscaped island between where a car pulled up to the drive-thru window and the residential area. From that location there was another 17' to the building.
 - On the residential side of the six foot masonry wall, a garage was tucked up to the wall, providing additional separation.
- Only a Starbucks is being requested. The differences between a bank drive-thru and a Starbucks drive-thru included:
 - Banking hours are generally 9am to 5pm. Starbucks restaurants are generally open from 6am to 8pm.
 - Drive-thru restaurants are often accompanied by the smell of cooking, but in this instance the request is limited to a Starbucks, which would have no cooking odor.
- Starbucks requires fewer deliveries. Because the applicant controls the shopping center, they can require all deliveries to come through the shopping center, rather than from the residential side.
- Starbucks has agreed to a 10-year lease with two 5-year options.
- This proposal improved the site by:
 - Putting someone in the vacant bank building
 - There are two separate lots with two vacant buildings on the corner of Purdue and Grand River. If the use variance is approved, the applicant would like to remove those two vacant buildings, and landscape that whole area and leave it landscaped, which would create a very nice entrance to the neighborhood.
- The city's traffic consultant reported "the proposed development and adjacent roadways are expected to accommodate the projected trips generated by the site."

- While it was the applicant's preference to have the entrance directly on Grand River, MDOT would not permit another curb cut on Grand River and had directed them to use Purdue. The Starbucks would also be accessible via the shopping center.
- The stacking lane could accommodate 16 cars, although they did not anticipate that stacking volume.
- Addressing the concern brought by residents relative to traffic leaving Starbucks and cutting north on Purdue, the traffic impact study showed only 5% of all trips would take that route, or an average of about eight cars per day. Additionally, the applicants were willing to construct a 1' high, landscaped porkchop island, which would force traffic to turn right and go south, resulting in zero left turns on Purdue.
- The applicants have talked to the neighbors and are happy to work with them.
- Regarding cars headed south on Purdue and waiting to get onto Grand River, there was an L-1 zoning district opposite this site, with no residences on the corner of Purdue. The traffic consultant indicated the traffic from Starbucks could be handled.
- Regarding the use variance criteria:
 1. The property cannot yield a reasonable return as zoned. The bank is vacant and has been for years. The only businesses that have been interested in the site are all drive-thru restaurants. Starbucks is the least intrusive of these.
 2. Unique circumstances of the property. This site is tucked away in a corner. The only way to get to the site is by going west on Grand River and making a left turn in. Further to the west, there is a right turn out. This was a unique situation with respect to left in, right out.
 3. The use will not alter the character of the neighborhood. The entirety of the western boundary for this neighborhood is a parking lot for the B-3 shopping center. Also, Starbucks might technically be a restaurant, but in reality it was a coffee shop – a neighborhood type of use.

Board questions and discussion

In response to questions from the Board, the applicants gave the following further information:

- MDOT refused the use of the two existing driveways because they required the driveway be almost 1000' feet away from the fork in the road. The applicants had spent a year working with MDOT but were ultimately unsuccessful in their quest to provide access off of Grand River Avenue.
- MDOT will not permit two way traffic at the eastern access, because they will not permit an exit so close to the fork.
- While there were already four ingress and egress locations for the shopping center parking lot, the operator wants customers to be able to go east on Grand River before the fork in the road. Without this availability, there was no agreement with Starbucks. The only way to provide an eastern exit was via Purdue. Per the traffic study, an exit via Purdue can safely allow for traffic to exit the site in both directions.
- Mr. Shango said they wanted to protect the neighbors via signage, cameras, and enforcement. The proposed configuration was his last resort.
- While the Purdue entrance would allow access to the greater shopping center as well as Starbucks, shopping center customers would be unlikely to use that entrance as the wider entrances close to the actual shopping were easily available.
- Again, there was room for 16 stacked cars from Purdue to the window. The traffic study said that by capturing the two properties along Purdue, stacking would not leak onto Purdue.
- There was room for 20 stacked cars at the exit. The traffic study estimated 2.5 cars stacking to exit in the morning peak hours and 3 cars stacking to exit during evening peak hours.

- Mr. Shango affirmed that if for some reason Starbucks left the site, the applicants would return to the City and relinquish the variance approval. However, the lease was signed, the applicants knew who they were getting as a tenant, and had done all their due diligence in advance of appearing before the ZBA.
- Utilizing the overhead, the applicants pointed out the locations of the order and pick up windows on the site.
- Chair Lindquist commented that aside from the additional screening, the building and drive-thru would still be too close to the adjacent residential area, and would not be divided by a thoroughfare.

Mr. Shango reiterated that there was 49' from the building and the squawk box to the residential use across Purdue. It was a substantial distance, notwithstanding that Purdue was not a thoroughfare. The squawk box will be separated from the residential by a landscape island, trees, a six foot wall and a garage.

Chair Lindquist pointed out that the squawk box was closer to the residential lot than the teller window ever was. This proposal was not equivalent to the bank's drive-thru.

Mr. Shango said that while the bank never utilized a pre-order station, he believed that a dense buffer could be created to prevent the noise from being a nuisance. The two closest residents had garages, and one had provided a signed approval. He had been unable to reach the 2nd homeowner. He had gone door-to-door to talk with the nearby neighbors.

Mr. Landry suggested that requiring more sound mitigation was a Planning Commission issue. Sound could be dealt with at site plan review.

Public Comment:

Chair Lindquist opened the meeting to public comment.

Susan Johnson, 21845 Purdue, opposed this variance request due to traffic concerns for the residents on Purdue and the increased number of cars that will be exiting the shopping center onto Purdue.

Paul Walk, 22205 Purdue, also opposed this variance request due to traffic concerns. He wondered how traffic that wanted to go into the drive-thru lane from the shopping center would blend into a queue that goes from the window back south and then east to Purdue.

As no other public indicated they wished to speak, Chair Lindquist closed public comment.

Member O'Connell said there was an affidavit of mailing with 58 returns.

Applicant response to public comment:

Mr. Shango said he would protect his neighbors and enforce against turning left onto Purdue. In response to the question about cars entering from the shopping center when there is a queue, the customer will either park and go in, or drive south and wait until the queue reduces so they can enter the line. They will not be able to cut in line or go through Purdue.

Member Collins said there was nothing to stop someone from exiting on Purdue and using someone's driveway to turn around in order to go back into Starbucks.

Mr. Shango said he had been in the fast food business for 15 years. A queue of 16 cars would eventually put this location out of business because it meant operations were too slow. 16 cars were shown because that was possible, but they did not expect 16 cars to stack up in the lane. Most of the time a car from the shopping center would turn south, turn left, and then easily get into line. Also, drivers currently used Purdue as a cut-through. The proposed configuration would reduce that activity, as there might be a little more traffic at the intersection that would make that traffic pattern undesirable. Per the traffic study, no stacking traffic would leak onto Purdue or to M-5.

Member Vergun said that a long queue would discourage customers from coming to this location; customers would simply keep going and find another drive-thru elsewhere to purchase their coffee.

Board Discussion and/or a motion

Discussion included:

- Any motion to grant the variance should not be tied to a specific brand name, but should be tied to a specific site plan, and to specifics and conditions of the use.
- Mr. Shango said the current site plan as shown this evening was the site plan they were working with.
- It would likely be impossible to have a speaker box that is not audible at the residential property line.
- Much of the vehicular noise would be buffered by the Starbucks building itself.
- Chair Lindquist remained concerned regarding noise from the speaker box being heard on residential properties, as well as the noise from vehicles, including loud music and phone conversations heard through the car's speaker system. Noise from the vehicles should be part of the consideration as to whether a use variance should be granted.
- Member Vergun felt the speaker location and noise from the vehicles would be buffered by the building.
- In response to comments, Mr. Shango explained processes used to keep the queue moving quickly through the Starbucks ordering and pick up system, including having a space for cars to pull over for orders that might take longer. The site plan as proposed was the best configuration for the building and proposed use. Due to the amount of buffering, noise from the speaker would not be heard by the residential neighbors. Demolishing the buildings on the corner of Purdue and Grand River would clean up a polluted site. The traffic study had been thorough and showed the traffic could flow on the site and Purdue as proposed. He asked for approval of this use variance request, conditioned on a use that was comparable to a Starbucks use, and conditioned on a decibel report being completed.
- Chair Lindquist pointed out that the reason these issues were being discussed was why the ordinance prohibited this type of drive-thru restaurant business adjacent to residential zoning. There was no compelling reason for the use of the additional lots for an additional entrance, except that the applicant needed the entrance off Purdue as a convenience for customers exiting from Starbucks. This did not alleviate in any way the property being adjacent to RA-1 properties, or the basic problem that the side of the building and the drive-thru operation would be directly adjacent to a residential district.
- Member Vergun said that the use variance allowing the drive-thru was necessary in order for Starbucks to consider this property as a possible location.

After further discussion and amendment, the following motion was offered:

MOTION by Vergun, support by Khan, in the matter of ZBA case 01-23-5722, that the petitioner's request for a use variance for a drive-in use abutting an RA zoning district **be granted** because the petitioner did demonstrate unnecessary hardship exists in this case in setting forth facts which show that:

1. Petitioner's property cannot be used for the purposes permitted in this zoning district. Specifically in order to have a profitable Starbucks operation here, the applicant has determined that can only occur with drive-thru availability. There is a potential for continued long-term vacancy if a variance is not granted.
2. Petitioner's plight is due to unique circumstances peculiar to this property, particularly noting the close entryway to the M-5 expressway to the west, and the existing nature of the entries and exits from the shopping center and how MDOT has limited the project from adding another entryway directly on to Grand River.
3. That the petitioner's suggested use would not alter the essential character of the area, in that there is already a long-term existing shopping center that this area is on the edge of and that has in prior years supported other retail and financial businesses.
4. That the petitioner's problem is not self-created.

With the following conditions:

1. The establishment shall be per the submitted site plan that has been shown to the ZBA throughout the meeting, as depicted on the site plan documents, and not as shown within the traffic impact study.
2. The proposed exit onto Purdue has the traffic-directing "porkchop design" median as shown this evening, that would make it difficult to turn north and go left on Purdue.
3. Starbucks will be the only establishment allowed on the parcel that will be allowed to contain a drive-thru lane as part of its operations.
4. The building will be as currently proposed.
5. No cooking or food odors are permitted outside the building, nor are any activities allowed that will require a grease dumpster.
6. No delivery truck traffic permitted on Purdue.
7. Hours of delivery are limited to 6am – 8pm.
8. Hours of service are limited to 6am – 8pm.

Roll call vote:

Collins	aye
Khan	aye
O'Connell	nay
Vergun	aye
Lindquist	nay

Motion to approve a use variance failed 3-2, as a use variance requires 5 affirmative votes.

5. PUBLIC QUESTIONS AND COMMENTS:

Paul Walk, 22205 Purdue, asked for clarification regarding the 58 returns. The Board explained that the 58 returns were returned mailers giving notice of this hearing.

6. APPROVAL OF MINUTES December 13, 2022

MOTION by O’Connell, support by Khan, to approve the December 13, 2022 meeting minutes as submitted.

Motion carried by voice vote.

7. ADJOURNMENT

MOTION by O’Connell, support by Vergun, to adjourn the meeting at 9:23 p.m.

Motion approved unanimously.

Respectfully submitted,
Michael O’Connell, Secretary

/cem