

**MINUTES
ZONING BOARD OF APPEALS
JUNE 8, 2021 – 7:30 PM
CITY OF FARMINGTON HILLS
31555 W ELEVEN MILE ROAD
FARMINGTON HILLS, MICHIGAN**

CALL MEETING TO ORDER

This meeting was held electronically as authorized under the Open Meetings Act, MCL 15.261, *ET SEQ.*, as amended, and called to order by Chair Vergun at 7:31 p.m. Members of the Board were asked to state their name and location, as to where they were attending the electronic meeting.

ROLL CALL

Members Present: Irvin, City of Farmington Hills, Oakland County, MI
 King, City of Farmington Hills, Oakland County, MI
 Lindquist, City of Farmington Hills, Oakland County, MI
 Masood, City of Farmington Hills, Oakland County, MI
 Rich, City of Farmington Hills, Oakland County, MI
 Vergun, City of Farmington Hills, Oakland County, MI

Members Absent: O’Connell

Others Present: City Attorney Morita, Zoning Representative Fletcher, City Planner Stec,
 Recording Secretary McGuire

APPROVAL OF AGENDA

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

Roll call vote:

Irvin	Aye
King	Aye
Lindquist	Aye
Masood	Aye
Rich	Aye
Vergun	Aye

MOTION carried 6-0.

Chair Vergun noted that Board Members had visited the site individually, and explained process for tonight’s meeting, including formal procedure, courtesies and right of appeal.

NEW BUSINESS

A. ZBA CASE: 6-21-5676
 LOCATION: 27745 Orchard Lake Road
 PARCEL I.D.: 23-15-201-015
 REQUEST: In an ES Zoning District, in order to construct an addition to the rear of an existing gas station, the following variances are requested: 1. A 15-foot variance from the minimum required 20-foot western/rear yard setback; 2. A

15-foot variance from the minimum required 20-foot southern/side yard setback; 3. A variance of a loading and unloading space.
CODE SECTION: 34-3.1.27.E.; 34-5.4
APPLICANT: Faiz Simon
OWNER: Faiz Simon/Island Lane Capital/Three Orchards Real Estate, L.L.C.

Member Masood read the case.

Utilizing a PowerPoint presentation shown on the ZOOM screen, Zoning Representative Fletcher gave the facts for this case and reviewed the items in the submission packet. The parcel was located on the southwest corner of 12 Mile Road and Orchard Lake Road.

Architect Ghassan Abdelnour, GAV Associates, was present on behalf of this request for variances in order to construct a rear addition to an existing gas station. Faiz Simon, owner, was also present.

Mr. Abdelnour explained that they had received a similar variance approval 4 years ago. The front of the site would be unchanged, except that the Planning Department had asked them to remove some parking spaces that were too close to the entrance drives, and had asked them for new landscaping on the site. They did those things and the Planning Commission had approved their site plan, conditioned upon the applicant receiving the variances requested this evening.

This proposal would enlarge the rear of the building. They were proposing to combine part of the existing building with the new addition, and the existing 1900 square foot building would be enlarged by about 1,000 square feet. The outside circulation will be unchanged.

In response to a question from Member Rich regarding the request to waive the requirement for a loading zone, City Planner Stec said the ordinance would normally require a 520 square foot loading zone.

Member Rich noted that the approved site plan from a number of years ago called for some of the gas pumps to be removed. Had that occurred, and if not, were they proposed to be removed?

Mr. Abdelnour said the station only had 3 pumps, and they were not proposing to remove any of them. They had 6 car spaces at the pumps, and 11 parking spaces on the property. The front of the station would not change except for the modifications already described to the parking and landscaping, and the circulation would not change. The applicant was requesting the addition in order to get better circulation inside the building.

Member King asked the applicant to explain further why this variance request should be approved. A variance to the zoning ordinance needed a reason other than the applicants want to do something. Was there a reason beyond just a desire to have more retail space?

Mr. Abdelnour said the retail space was very important. A gas station provided more than just gas, and customers were asking for the ability to purchase more items inside the store. For the gas station to survive these things had to be provided. The addition will allow the store interior to look better in the front sales area that serviced customers, while providing storage in the rear.

Noting that there was an existing vacant restaurant to the west, an existing vacant restaurant to the south, and an existing motel that is proposed to be converted to senior housing to the southwest, Member King

asked if the commercial neighbors to this property had expressed any concerns or approvals for this project.

Mr. Abdelnour said they had talked with the owner of the restaurant to the west, who was supportive. The owner was also in discussion with the owner of the potential senior living redevelopment, discussing the potential entrance and exit to that site.

Member King asked if anything had been received in writing from the neighbors.

City Planner Stec said that no formal written letters had been submitted for tonight's case. However, there had been several discussions regarding the proposed Planned Unit Development (PUD) to redevelop the abutting motel to a senior living facility; the PUD was going through the approval process.

As part of the public benefit for the PUD project, the PUD plan proposed a new curb cut onto Orchard Lake Road, providing access to their site, to the gas station site, and to the Roberto's restaurant site. The PUD also proposed a cross access easement granting access from the gas station and the restaurant site to Twelve Mile Road.

City Planner Stec said that the City had been exploring options to increase the safety of this intersection for over a decade, and the Board had been provided data from the Transportation Improvement Association showing that the 12 Mile and Orchard Lake intersection ranked as having the top number of crashes for signalized intersections in Farmington Hills, and is number 12 in Oakland County for the 3-year time period of 2017, 2018, and 2019. There was concern within the City regarding enhancing the safety of the intersection.

City Planner Stec showed the proposed curb cut on Orchard Lake Road between Roberto's restaurant and the subject site. The PUD developers were offering the curb cut to be shared with the other three businesses that would be affected: the two neighboring restaurants and the gas station. Again, they were also proposing a cross access easement granting public access from the gas station and Roberto's restaurant site to Twelve Mile Road. The long term plan was to close the 12 Mile restaurant's curb cut in order to direct traffic to the new Twelve Mile Road curb cut, directly to the west of that restaurant.

This scenario would result in a loss of parking spaces for the 12 Mile restaurant as well as for the Marathon gas station. The proponents of the PUD are proposing to allow 5 spaces of shared parking spaces per business.

In order to promote the public health, safety, and welfare, the Planning Office was requesting that the ZBA take the reconfiguration of the Orchard Lake access points into consideration as part of its deliberation on this case. If the ZBA is interested in doing this, they could condition any approval on the closure of both curb cuts on Orchard Lake Road, one curb cut (preferably the one to the north) on Orchard Lake Road, or, at a minimum to require a connection to the south for the utilization of the new shared access point, when that access point is constructed.

City Planner Stec said that at a meeting with representatives of Roberto's restaurant, the gas station, the proponent of the proposed PUD, and city staff, Mr. Simon had expressed concern that fuel delivery vehicles would not be able to navigate off his site if the Orchard Lake Road curb cuts were removed. The autoturn analysis from the City's engineering consultant showed that both a WB-40 tanker truck, which is the most common size fuel delivery truck, and the larger WB-50 truck could negotiate the site under the new configuration with the shared access point.

In summary, the City Planning Office and engineering staff were asking that the ZBA condition any approval of the variance requests, which were significant, on requiring the 3 conditions as outlined in City Planner Stec's May 25, 2021 memorandum to Zoning Supervisor Dennis Randt, which are:

1. One or more of the existing Orchard Lake access points at 27745 Orchard Lake Road are removed per the recommendation of the City Engineering Division.
2. A connection to the site to the south be permitted for the utilization of the new shared Orchard Lake access point at the time it is constructed.
3. Any necessary cross access agreements between the subject parcel and the parcel to the south be entered into.

In response to questions from Member King, the following information was given:

- City Planner Stec clarified that the conditions did not require the applicants to commit to off-site improvements, but only that the requested change to the curb cuts at the gas station be tied to the access points offered by the PUD proponent.
- City Attorney Morita added that conditions outlined in the Planner's letter were related to the subject property, and would require the property owner to do certain things in order to maintain an approved site plan, all of which were valid considerations in order to promote the health, safety, and welfare of the City.
- City Attorney Morita said that in the last 10 years, since the unused variances had been approved for this site, the City had obtained new statistics regarding the safety of the intersection.
- City Planner Stec said that the variances requested this evening were basically the same requests that had been approved previously, with the change that fewer parking spaces were required due to an ordinance change that allowed the space at each fueling pump to be counted as half a parking space.
- City Planner Stec added that the other important difference involved timing. Previously there was no opportunity to improve the circulation for all the businesses at this corner. Now, with the proposed PUD developer willing to open up the curb cut on Orchard Lake Road as a public benefit to promote health, safety, and welfare, the conditions could be part of an approval.

Mr. Abdelnour pointed out that the applicants had been in front of the Planning Commission recently, when the Planning Commission said that the gas station would not work if the two curb cuts on Orchard Lake Road were closed. Commissioners came to the gas station and said that if any of the existing entrances were closed it would harm the business, and the City cannot ruin someone's business. Therefore they declined to require closing the curb cuts as a condition of site plan approval.

Mr. Abdelnour said that the gas station is tight. The northern Orchard Lake curb cut is used to enter the site, and the southern entrance is used to exit. Again, putting stringent conditions on this variance request would ruin this long-time, functioning business. The applicant agreed to the connection to the south, but to close the two curb cuts on Orchard Lake Road would ruin the business.

At 8:09 pm Chair Vergun briefly dropped out of the meeting and Vice Chair Lindquist assumed the chair.

Vice Chair Lindquist asked the applicant to clearly state whether they were supportive, indifferent to, or opposed to receiving the requested variances with the conditions as stated,

Mr. Abdelnour said these conditions had just come up, and they had not had the chance to discuss them.

Mr. Simon said he was interested in discussing this issue, but he also wanted to be shown where the accidents happened as a result of the curb cuts on his property. He argued that accidents did not happen at his station. 4-1/2 years ago they went through the approval process – not 10 years ago. While he thought having a curb cut off of Orchard Lake Road as proposed on the PUD site was a great idea and would benefit the PUD and Roberto's restaurant, but it provided no positive benefit to his gas station. His customers had access from 12 Mile Road to get in the station, get fuel, and get out. There were no accidents there. He had not seen accidents at his station.

Member Lindquist repeated his question regarding whether Mr. Simon was supportive of, indifferent to, or opposed to receiving the variances with the listed conditions attached.

Mr. Simon said he was opposed to the conditions. He was not requesting any change to the outside of the maneuverability part of the station. He wanted to add to the rear, in order to create storage and provide a way for customers to maneuver inside the store. It was not fair or right to require the gas station to use another entrance on Orchard Lake Road, which would be for the benefit of the PUD, but which would hurt the gas station.

Mr. Simon said he was willing to allow the access to the south entrance, even though he would lose his parking spaces there. But he did not want to close his two Orchard Lake Road curb cuts.

Chair Vergun returned to the meeting at 8:15 pm and resumed the chair.

City Planner Stec explained that while the graphic on the Zoom screen showed both curb cuts closed, which would be idea from city staff perspective, according to the City engineer closing even one curb cut would be a significant safety improvement. He commended Mr. Simon for considering making the connection to the south.

City Planner Stec clarified that it wasn't the PUD proponent's idea to open up a curb cut on Orchard Lake Road, but rather a suggestion from staff.

Chair Vergun noted that the first two variance requests from setback requirements were asking for a 75% variance from the 20 foot requirement. The addition was close to doubling the size of the building. Could the applicants explain their justification for this change? The ZBA needed to be able to find that the problem would prevent the owner from using the property for its intended purpose, and that the problem was not self-created. Also, there was a portion of land on the site that was larger than the addition's building envelope, where an addition could be constructed by right. He asked the applicant to speak to these concerns.

Mr. Abdelnour reiterated that they were trying not to lose any parking spaces or impact the existing circulation patterns. They had the minimum circulation pattern now, and constructing the addition where there is space would cause a hardship to the site itself. They wanted to put the addition at the rear of the building because they did not want to change the traffic pattern on the site.

Mr. Abdelnour noted that this gas station had to compete with nearby gas stations. As patterns changed, customers wanted to have a greater variety of things in the store, but the area in the building was not large enough for a complete sales area. This was an issue of survival. They had received approvals about 5 years ago. They were not trying to make any changes to the site, except to improve it. The owners were adding more landscaping and fixing the site generally. They were willing to open the entrance to the side

and see how that worked, and perhaps make further changes as requested after experiencing the new Orchard Lake connection.

Also, a driver using the last pump closest to Orchard Lake Road needed to come in from the corner and leave from the back of the facility. The curb cuts are not in/out, but rather one curb cut brought people in, and another allowed them to exit. The minute one of those curb cuts is closed the station would experience a big hardship.

Mr. Simon explained that the fuel business is changing and their volume was decreasing every year. He needed to enhance the store, adding more prepared food to keep the business going. 10-15 years from now the fuel business was projected to decrease by 50%. He needed to invest in the business now to keep it going in the future.

Member Rich noted that the minutes in the Members' packets showed a variance was granted on December 14, 2010, but nothing more recent than that. He asked the applicant to break down the percentage of the new construction that will be used for storage.

Mr. Abdelnour said approximately 70% of the new addition will be used for storage. City Planner Stec noted that a floor plan had been included in the submittal information.

Member Rich pointed out that the proposed entrance on Orchard Lake Road would serve 4 businesses: two restaurants, an assisted living facility, and this gas station. Who would maintain the entrance and how would the City ensure that it be maintained? Private entrances could deteriorate quickly

City Planner Stec said maintenance would be the responsibility of the PUD owner, unless they negotiated with neighboring properties to share responsibility.

Regarding the overall usage of the Orchard Lake Road entrance, City Planner Stec explained that the assisted living use is a low-intensity use, and the PUD proposed to remove 100 parking spaces from the site. Roberto's customers would use the new entrance. The primary entrance to the 12 Mile Road restaurant would be the existing curb cut on 12 Mile. Probably the heaviest user of the new entrance would be the gas station.

Member Rich said the gas station would clearly be the heaviest user if the City wanted the station to close their existing 2 curb cuts on Orchard Lake Road.

City Planner Stec suggested that perhaps only one of the curb cuts be closed, preferably the northern one.

Member Lindquist said that if all of the gas station's exit traffic was diverted to the proposed new curb cut, this would increase the use of this particular exit. He was concerned with traffic cutting through the gas station to avoid the traffic light at the corner, and then exiting at the new curb cut, which was close to the westbound 696 ramp. He asked for clarity regarding what exactly the City was requesting.

City Attorney Morita pointed to the recommendations as listed in the Planner's letter: that 1) one or more of the existing Orchard Lake access points be closed, 2) that the proponent permit the connection to the shared drive to the south, and 3) any necessary cross access agreements between the subject parcel and the parcel to the south be entered into.

These conditions could be made subject to approval by the City Attorney's office.

Member Lindquist asked if the variance request could be granted without consideration of any of the variances related to the proposed PUD.

City Attorney Morita said that could be done. The ZBA needed to find that the variance request met the standards for granting a variance. After that, conditions should be considered, based on health, safety and welfare of the community. If the Board was considering granting the request, staff was recommending the three conditions as listed.

Chair Vergun opened the public hearing. Seeing that no public indicated they wished to speak, Chair Vergun closed the public hearing and brought the matter back to the Board for further discussion and/or a motion.

Member Masood reported that there was an affidavit of mailing. There were 62 mailings with 12 returns.

City Planner Stec suggested an additional condition, that: Revised site and landscape plans be submitted to the Planning Office showing compliance with any conditions imposed by the ZBA, in advance of construction and prior to permits being issued.

In response to a question from Mr. Abdelnour, City Planner Stec said the applicants had complied with the Planning Commission requirements, with the exception of receiving the needed variances. If the variances are not granted the applicant did not have an approved site plan. If the variances are granted as requested, and any conditions are met, then there would be an approved site plan.

Chair Vergun said that there would be further meetings where the shared driveway would be discussed and refined, should the PUD go forward. The ZBA was being asked to act on the requested variances as published by the City: to decide on the distance variances and the waiver of the loading dock requirement.

Member Rich was concerned about cut-through traffic throughout the site, especially traffic that would be cutting through the gas station to avoid the Orchard Lake Road boulevard. This cut-through traffic would be facilitated by the proposed new curb cut on Orchard Lake Road. With the removal of the parking spaces at the gas station some customers would need to walk further to get to the store. With the cut through traffic, was a safety issue being created? What kind of enforcement was possible? Was it intentional for cross traffic to be going through the gas station?

City Attorney Morita said that her understanding from city staff was that the new configuration would improve safety in this area. Enforcement would be the same as existing: general police enforcement including tickets. Additionally the property owner can put up signs prohibiting cut through traffic, and can request a police car if there was a lot of such traffic.

Member Rich asked if there had been any consideration given to one-way entrances and exits for the existing Orchard Lake curb cuts. City Planner Stec said the Traffic Engineer had not made that recommendation.

Member Lindquist reviewed the internal traffic circulation pattern as being discussed. He thought the result would be additional traffic on the applicant's property, while the applicant gained no benefit in exchange for that. The applicant already had access to 12 Mile Road and Orchard Lake Road.

Member King said he was inclined to approve the requested variances for the expansion of the gas station store, because this is necessary for the continued favorable operation at this location, and the applicant is constrained by the property size. The request is also consistent with the request that was made and approved by the Zoning Board in the past. He was also sensitive to the important concerns of the Planning Department and their traffic consultant with regard to enhancing the safety of the intersection, and wanted to support the Planning Office's recommendations. He asked the applicant to again comment on how they would feel if the variances were approved conditioned upon closing one or more of the Orchard Lake Road curb cuts.

Mr. Simon said closing a curb cut would hurt his site, have a negative impact on his customer traffic, and would harm his business. Closing off Orchard Lake Road would in effect put him out of business. If the PUD developer and the Planning Commission wanted to put in an Orchard Lake Road access, they should do that, but they should not force him to close his current entrances and exit. This would not be fair and would hurt his business. He was opposed to this approach, saying, "It will not work for me at all."

Member Masood indicated he was ready to offer a motion.

MOTION by Masood, that in the matter of ZBA Case 6-21-5676, the petitioner's request for variances in an ES Zoning District, in order to construct an addition to the rear of an existing gas station, the following variances are granted: 1. A 15-foot variance from the minimum required 20-foot western/rear yard setback; 2. A 15-foot variance from the minimum required 20-foot southern/side yard setback; 3. A variance of a loading and unloading space, because the petitioner did demonstrate practical difficulties 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.
2. That granting the variance 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
4. That the problem is not self-created. The lot exists as the homeowner purchased it.

With the following conditions

- The work be consistent with plans and materials as submitted.

Member Masood said that there were at least two previous cases where the same variances were granted. The property had a unique angled layout. Regarding the traffic issues, while it is clear the intersection has known traffic issues, to ask the ZBA to impose the suggested restrictions is not warranted. The City should address traffic concerns, but to tie the variances for this property owner to the recommended changes was not satisfactory.

Member Rich asked if the City had any recourse if the 3 curb cuts did present a demonstrated traffic hazard.

City Attorney Morita said that based on the traffic engineer's study, there is a demonstrated problem with 3 curb cuts in a row so close to each other. While there was the possibility the City or County could force closure, such action would be very expensive. The most efficient way to handle the situation is to require the changes as a condition of the requested variance.

Member Lindquist asked City Planner Stec if the PUD had been approved without the closure of the existing curb cuts at the gas station. Did the PUD require that if the additional access is granted, the 5 shared parking spaces become part of the PUD agreement?

City Planner Stec explained that the PUD had not yet been approved by City Council. If it was approved, and if there was no action on the access, the PUD agreement would probably require future action allowing shared parking, should a connection be made in the future.

Member Lindquist was concerned that Mr. Simon might agree to the conditions this evening, but would not receive the shared parking as discussed.

City Attorney Morita discussed process. The variance conditions would be based on the PUD actually going forward, and the PUD owner agreeing to provide the 5 shared parking spaces in exchange for the shared access to the site. If the PUD owner is not agreeable to this, the gas station would not be required to close any entrance. If an agreement is reached, at least the gas station's southern curb cut would be closed.

City Planner Stec said that the City's traffic engineer did not recommend closing only the south curb cut. If only one curb cut was to be closed, the traffic engineer recommended it be the north one.

Noting that the motion was not yet supported, Member Rich asked if Member Masood would add a condition that in the event the PUD is granted the access drive to Orchard Lake Road, the gas station's northern curb cut would be closed.

Member Masood said he wanted his motion to stand as stated.

The Chair recognized Mr. Simon, who reiterated that he did not think he should be forced to take action on behalf of the proposed PUD. Most of his customers use the northern curb cut to enter the site, and the southern curb cut to exit. He had never seen an accident on his property. Again, he was willing to allow access from his property to Roberto's and to the Assisted Living Center, and his customers could exit the site using the common access. But he knew his business, and many customers entered his site using the north curb cut. Closing that curb cut would hurt his business.

Chair Vergun asked if there was a support for Member Masood's motion. As there was none, Chair Vergun noted that the motion failed for lack of support.

Member Rich said he was considering supporting the request subject to closing one of the curb cuts if and only if the PUD is granted access to Orchard Lake Road. He was concerned with having three curb cuts so close together in that area, and discussed the pros and cons of whether it would be better to close the north or south curb cut (the north appeared potentially more dangerous, but the south was right next to the proposed curb cut).

The Chair recognized Mr. Abdelnour. Mr. Abdelnour said the north entrance is the access used by customers to enter the site; they didn't leave by that entrance. As an architect he agreed it was better not to have two access points right next to each other. If one curb cut had to be closed, it would be better to close the southern one. If this was made a condition of the motion, he suggested allowing the applicant to participate in that decision.

Member King indicated he was ready to make a motion.

MOTION by King, support by Rich, that in the matter of ZBA Case 6-21-5676, the Board of Zoning Appeals GRANT the petitioner's request for variances in an ES Zoning District, in order to construct an addition to the rear of an existing gas station, as follows:

1. A 15-foot variance from the minimum required 20-foot western/rear yard setback
2. A 15-foot variance from the minimum required 20-foot southern/side yard setback
3. A variance of a loading and unloading space

because the petitioner did demonstrate practical difficulties 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, referencing the unique configuration of the building on the site and the small footprint of the property.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district, and be more consistent with justice to other property owners as well, particularly as it relates to the planned PUD property and adjacent property owners.
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 conditions:

- One or more of the existing Orchard Lake access points at 27745 Orchard Lake Road are removed per the recommendation of the City Engineering Division, and discussion and approval with the owner.
- A connection to the site to the south be permitted for the utilization of the new shared Orchard Lake access point at the time it is constructed.
- Any necessary cross access agreements between the subject parcel and the parcel to the south be entered into.
- Revised site and landscape plans be submitted to the Planning Department prior to permits being issued, showing compliance with the final agreement.
- Addition be built according to plans submitted to the Planning Department and consistent with the building materials as submitted.

Member Lindquist said he intended to support the motion, as the motion will give value and assistance to other property owners in the area, as well as enhancing traffic safety for the general public. Specifically, he was able to support the motion because of the conditions applying the recommendations of the Planning Department and the Traffic Engineer. Without the conditions providing help to adjacent property owners, he would be inclined to vote against this variance request. With the motion now containing conditions helpful to other property owners in the area and in the interest of traffic safety he will support it.

Roll call vote:

Irvin	Nay
King	Aye

Lindquist	Aye
Masood	Nay
Rich	Aye
Vergun	Aye

MOTION carried 4-2.

PUBLIC QUESTIONS AND COMMENTS: None.

APPROVAL OF MINUTES: March 9, 2021

MOTION by Rich, support by Lindquist, to approve the March 9, 2021 Zoning Board of Appeals meeting minutes as presented.

Member Masood said as he was absent from the last meeting, he would abstain from voting.

Irvin	Aye
King	Aye
Lindquist	Aye
Masood	Abstain
Rich	Aye
Vergun	Aye

MOTION carried 5-0-1.

ADJOURNMENT

MOTION by Irvin, support by King, to adjourn the meeting at 9:30 p.m.

Roll call vote:

Irvin	Aye
King	Aye
Lindquist	Aye
Masood	Aye
Rich	Aye
Vergun	Aye

MOTION carried 6-0.

Respectfully submitted,
Azam Masood, Secretary

/cem