

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS – COUNCIL CHAMBER
31555 W ELEVEN MILE ROAD
FARMINGTON HILLS, MICHIGAN
JANUARY 11, 2022 – 7:30 PM**

CALL MEETING TO ORDER

Chair Lindquist called the meeting to order at 7:34 P.M. and made standard introductory remarks explaining the formal procedure, courtesies and right of appeal.

SITE VISIT JANUARY 9, 2021

Chair Lindquist noted when the Zoning Board of Appeals members visited the site. Members Khan, Rich, and Lindquist were present at the site visit; other members visited the sites independently.

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

ROLL CALL

Members Present: Lindquist, Masood, O’Connell, Vergun
Alternate Khan

Members Absent: Irvin, King, Rich

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

APPROVAL OF AGENDA

MOTION by Vergun, support by Masood, to approve the agenda as published.

Motion carried unanimously.

NEW BUSINESS

- A. **ZBA CASE: 1-22-5690**
LOCATON: 35780 Nancy Gail
PARCEL I.D.: 23-17-276-009
REQUEST: In an RA-1A Zoning District, in order to build a new 2,955 square foot single family home, a 725 square foot attached garage and retain a 646.8 square foot barn, the following variance is requested: A 121.8 square foot variance from the requirement that in no instance shall the combined floor area of all accessory uses and buildings exceed a total of 1,250 square feet.
CODE SECTION: 34-5.1.2.D.
APPLICANT/OWNER: Toby Manimalethu

Secretary O’Connell called the case.

Since the applicant was not yet present, Chair Lindquist asked that this item be moved to follow Item C. on the agenda.

- B. **ZBA CASE: 1-22-5691**

LOCATION: 31710 Dohany
PARCEL I.D: 23-22-476-025
REQUEST: In an RA-1 Zoning District, in order to build a 1,776 square foot attached accessory structure, the following variance is requested: A 538 square foot variance to the requirement that in no instance shall the combined area of all accessory buildings and uses exceed 1,250 square feet, or 50% of the maximum combined floor area of dwelling unit. The site is permitted 1,238 square foot combined floor area for all accessory structures.
CODE SECTION: 34-5.1.2.D
APPLICANT/OWNER: Zachary Brewster

Secretary O'Connell called the case.

Utilizing a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The .58-acre parcel was located north of 10 Mile Road and West of Orchard Lake Road, at 31710 Dohany Road, in an RA-1, One Family Residential Zoning District. The applicant had submitted elevations of the proposed structure, along with floor plans and a site plan showing the location of the proposed garage on the property.

Zachary Brewster, 31710 Dohany Drive, said that he was requesting permission to use the attic space of the proposed addition (attached garage). If there were no staircase and attic trusses, the plans would have been approved. He was requesting a variance from the 50% rule, in order to use the attic of the new garage for storage.

Chair Lindquist asked the applicant to address why compliance with the strict letter of the ordinance would unreasonably prevent the property from being used for the permitted purpose.

Mr. Brewster said complying with the ordinance would prevent him from having additional storage space above his garage.

In response to a question from Zoning Supervisor Randt, Mr. Brewster said the space would not be used for commercial purposes. It would be used to store family furniture and other similar items.

In response to questions from Chair Lindquist, Mr. Brewster gave the following information:

- The space would not be residential space or occupied in any way.
- There would be electricity to the new garage, but no permanent method of heating, such as a furnace. He might use a "Mr. Heater" type portable heater.
- Regarding the 4 criteria for granting a variance, Mr. Brewster said he could not add anything to his stated request, which was a request for permission to use the space above the proposed attached garage for storage.
- Per the City Planner, Mr. Brewster was entitled to 1,238 square feet of accessory structure area. In order to use the upper level for reasons as stated, a 538 square foot variance was necessary.

Secretary O'Connell pointed out that if there was no upper level to the garage, a variance would not be needed. Mr. Brewster said that was correct. Whether or not a variance was granted, the exterior of the structure would remain the same.

In response to further comments from Secretary O'Connell, City Attorney Morita said that height was not an issue for this project.

Member Masood emphasized that in order for the Zoning Board of Appeals to grant a variance, certain conditions had to be met. While the applicant had explained the need for storage, Member Masood was finding it difficult to understand how this was not a self-created problem, or how the variance request related to the unique circumstances of the property.

Mr. Brewster reiterated that he was simply requesting permission to use the space above the garage for storage.

Member Vergun asked if any thought or discussion had been given to using a pull-down stairway, as making this change would likely remove the need for any variance. Also, if the variance was not granted, Mr. Brewster could still utilize the upper attic space with a pull-down stair, thereby achieving close to the storage use that he wanted.

Mr. Brewster said using a pull-down stairway had not been discussed with the Planning Department. When drawings were submitted to the Building Department he was told if he had not included a permanent stairway, his plans would have been approved. However, Mr. Brewster preferred the permanent stairway for safety reasons. Having a pull-down stair would be less than ideal.

Chair Lindquist opened the meeting for public comment. Seeing that no public indicated they wished to speak, Chair Lindquist closed the public comment portion of the meeting and brought the matter back to the Board for discussion and/or a motion.

Secretary O'Connell reported there was an affidavit of mailing with one return.

Member Masood said he did not feel the variance request met criteria 3 and 4, and he believed this request should be denied.

MOTION by Masood, support by Vergun, that in the matter of ZBA Case 1-22-5691, 31710 Dohany, the Board of Zoning Appeals **DENY** the petitioner's request for a 538 square foot variance to the requirement that in no instance shall the combined area of all accessory buildings and uses exceed 1,250 square feet, or 50% of the maximum combined floor area of the dwelling unit, in order to build a 1,776 square foot attached accessory structure, because the petitioner did **NOT** demonstrate practical difficulties exist in this case, in that they **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 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.

Finding:

The Board finds the problem is self-created.

MOTION to DENY carried 4-1 (Khan opposed).

- C. ZBA CASE: 1-22-5692
LOCATION: Northwest corner of Twelve Mile and Middlebelt Roads
PARCEL I.D: 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 9.2 feet from the minimum fifty (50) foot street setback from Twelve Mile.
 - 2) A variance of 1.4 feet from the minimum fifty (50) foot street setback from Middlebelt.
 - 3) A variance of 9.5 feet from the required ten (10) foot deep landscape area abutting the street (Middlebelt).
 - 4) A variance of 4.5 feet from the required twenty (20) foot landscape buffer adjacent to RA districts.
 - 5) A variance to provide a screening fence within a front yard setback (along Orion Court).
 - 6) A variance to omit screening between the parking area and a major throughfare (Middlebelt Road).
- CODE SECTIONS: 34-3.5. G.; 34.3.5.2.V.; 34-5.14.6.;34-5.12.2. B.; 34-5.14.5.
APPLICANT: Harbor Retirement Development, L.L.C.
OWNERS: CS-HRA-Dillin Farmington Hills JV, Charles N. Jennings

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the facts of the case. The property was located on the northwest corner of Twelve Mile and Middlebelt Roads. The applicant had received substantially similar variances from the Board on July 23, 2019. Those variances had lapsed as no building permit was obtained within one year of receiving them. Additionally, the plans had been revised to allow for 10 additional assisted living apartments.

Charles Jennings, Chief Development Officer of Harbor Retirement Development, 958 20th Place, Vero Beach FL, was present on behalf of this application for the six variances as stated.

Mr. Jennings explained that this was a resubmission for substantially similar variances that were granted in 2019. Harbor Retirement had not been able to move forward with construction of the project within the year after the variances had been granted, due to issues associated with the Pandemic. The applicants had returned to the Planning Commission on November 18, 2021, with a revised site plan that added 10 additional assisted living apartments on the 2nd floor above what was previously a single story portion of the building. The variances were essentially the same variances that were requested and granted in 2019.

The narrative in the application materials addressed each of the criteria for granting a variance. The underlying reason for the request was driven by the City's future plan to have a 60-foot right-of-way on Middlebelt, vs. the existing 50-foot right-of-way, and how that future right-of-way impacted the current site plan. There were also some accommodations made after conversations with the property owners on Orion Court and at the Beechwood Condominiums (to the west of the site), including the construction not disturbing some of the existing buffers that had been there for decades.

Mr. Jennings continued that the variances were driven by situations out of their control: 1) By the City's desire to have a wider right-of-way in the future, and 2) Accommodations made to address concerns from nearby properties.

Secretary O'Connell asked for clarification regarding the changes to the variances granted in July 2019. Mr. Jennings said the variance requests were substantially similar. However, when the 10 additional

assisted living apartments were added above part of the memory care portion, the measurements changed by a couple of feet, and so the actual measurement in part of the variance request had to change. Also, the 5th variance request from 2019 had been split into requests 5 and 6.

Zoning Supervisor Randt asked about the construction timeline. Mr. Jennings said they would start on demolition and construction as soon as the weather made that possible.

Mr. Jennings added that they had met with the neighbors in both homeowners' associations; they had been seeking resident input since the process was first started. He felt the neighbors were supportive of the project and process. The applicants had listened to neighbor concerns and made changes where that was possible in order to address those concerns.

Member Masood indicated he was ready to offer a motion.

MOTION by Masood, support by O'Connell, that in the matter of ZBA Case 1-22-5692, Harbor Retirement Development, L.L.C., Northwest Corner of Twelve Mile and Middlebelt, Parcel IDS: 23-11-477-109, -013, and -014, the Board of Zoning Appeals **GRANT** the petitioner's request for the following six variances, in order to build a proposed senior/assisted living facility in an RC-2 Zoning District:

- 1) A variance of 9.2 feet from the minimum fifty (50) foot street setback from Twelve Mile.
- 2) A variance of 1.4 feet from the minimum fifty (50) foot street setback from Middlebelt.
- 3) A variance of 9.5 feet from the required ten (10) foot deep landscape area abutting the street (Middlebelt).
- 4) A variance of 4.5 feet from the required twenty (20) foot landscape buffer adjacent to RA districts.
- 5) A variance to provide a screening fence within a front yard setback (along Orion Court).
- 6) A variance to omit screening between the parking area and a major throughfare (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 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 variances requested would do substantial justice to the petitioner as well as to other property owners in the district. When substantially similar variances were granted at the July 23, 2019 ZBA meeting, there was evidence provided that the homeowners' association supported this request.
3. As noted in the July 23, 2019 motion, 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.

And with the following finding:

- As recorded in the July 23, 2019 ZBA meeting minutes, the Board finds that based on the 1971 Michigan Supreme Court case Godron 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.

MOTION to grant carried 5-0.

Chair Lindquist asked Secretary O'Connell to recall Case A.

- A. ZBA CASE: 1-22-5690
LOCATON: 35780 Nancy Gail
PARCEL I.D.: 23-17-276-009
REQUEST: In an RA-1A Zoning District, in order to build a new 2,955 square foot single family home, a 725 square foot attached garage and retain a 646.8 square foot barn, the following variance is requested: A 121.8 square foot variance from the requirement that in no instance shall the combined floor area of all accessory uses and buildings exceed a total of 1,250 square feet.
CODE SECTION: 34-5.1.2.D.
APPLICANT/OWNER: Toby Manimallethu

As the applicant was still not present, the following motion was offered:

MOTION by Vergun, support by Khan, to adjourn ZBA Case 1-22-5690, 35780 Nancy Gail, to the March 8, 2022 ZBA meeting.

Motion carried 5-0.

PUBLIC QUESTIONS AND COMMENTS:

None

APPROVAL OF MINUTES: November 9, 2021

MOTION by Masood, support by O'Connell, to approve the November 9, 2021 Zoning Board of Appeals meeting minutes as presented.

Motion carried unanimously.

ADJOURNMENT

MOTION by Vergun, support by O'Connell, to adjourn the meeting at 8:26 p.m.

Motion approved unanimously.

Respectfully submitted,
Michael O'Connell, Secretary
/cem