

**MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
FARMINGTON HILLS CITY HALL – COUNCIL CHAMBER  
31555 W. ELEVEN MILE ROAD  
FARMINGTON HILLS, MI  
September 13, 2022 – 7:30 PM**

**CALL MEETING TO ORDER**

Chair Lindquist called the meeting to order at 7:37pm.

Members Present: Irvin, Khan (Alternate), King, O’Connell, Rich, Vergun, Lindquist

Members Absent: Masood

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

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 September 11, and may also have visited the sites independently. No action was taken at the site visit.

**APPROVAL OF AGENDA**

**MOTION by Rich, support by O’Connell, to approve the agenda as presented.**

**Motion approved unanimously.**

**NEW BUSINESS:**

- A. ZBA CASE: 9-22-5713**  
LOCATION: 30308 Kimberly Ct.  
PARCEL I.D.: 23-35-402-021  
REQUEST: In an RA-3 Zoning District, in order to install pool equipment / pad and a 6-foot-high fence in an exterior side yard. The following variances are requested:  
1. A variance to permit pool equipment within a front yard setback required in the side yard of a corner lot. 2. A variance of two (2) feet and ten (10) inches to permit pool equipment to have a twenty- seven (27) – foot -two (2) – inch front yard setback where a thirty (30) foot setback is required. 3. A 3-foot variance to the 3-foot height limit is requested to permit a 6-foot-high fence in the exterior side yard.  
CODE SECTION: 34-5.1.1.2. iv., 34-3.1.6. E, 34-5.12. 1.C. ii.  
APPLICANT: Sun and Fun Pools & Kimberly Fence  
OWNER: Cassie Howard

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property was located off Tuck Road on Kimberly Court in an RA-3 zoning district. The applicants were proposing to install a pool equipment pad and a 6’ high fence in an exterior side yard.

Cassie Howard, 30308 Kimberly Court, was present on behalf of this application. She made the following points:

- The pool company determined the best location to install the pool equipment pad. Because there was an egress window right off the back corner on the other side of the house, that was not an optimal place to put the pool. The best placement for the pool equipment pad in terms of access to utilities, maintenance, proximity of windows, and other requirements regarding the equipment was in the front yard setback in the side yard of her corner lot.
- The proposed perimeter fence would enclose the pool. The fence design was based on and was consistent with the neighbor's fence across the street, to allow continuous entry into the subdivision, as requested by the Homeowners Association (HOA). The fence design would give the applicant more usable space in the backyard around the pool and would meet the HOA's aesthetic requirement.
- In order to meet ordinance setback requirements, the pool would have to be installed right next to the house which would impede the applicant's ability to utilize the area needed for the pool. The distance between the pool and the fence would be limited to a 4' aisleway, and would limit the applicant's ability to get around the pool easily and safely.
- The variance for the fence height was requested in order to meet other City ordinances which required a 4' or higher fence around pools.

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

- The pool equipment pad could not be installed on the other side of the house because of the egress window location and window spacing on that side of the house. The only other option for the pool equipment pad would be in the center of the yard, which would create a safety hazard for work and play in the yard.
- The equipment pad could not be installed on the east side of the pool because of an elevation issue. The land sloped and would not allow even ground placement for the pad.
- The filter system and the heating element system would be on the pool equipment pad.

In response to a question from Member Vergun, Zoning Supervisor Randt explained that a fence up to 3' high would be allowed in the side yard.

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

Secretary O'Connell said there was an affidavit of mailing with no returns.

Board discussion:

In response to a question from Member Rich, Zoning Supervisor Randt said that there was a 1989 application on record for the neighbor's fence across the street, but a fence permit was not on file. The records were unclear as to whether that fence may have been part of the original subdivision.

In response to a question from Member O'Connell, City Attorney Morita explained that only the area directly behind the house was considered the back yard. The entire side yard area starting at the front line of the house going to the rear property line was considered to be the side yard/second front yard. The area directly behind the house to the property line was the rear yard.

In response to a question from Member King, Zoning Supervisor Randt explained that when a fence was used to enclose a pool, it was required to be at least 4' high. There were some circumstances depending on pool construction when a separate fence was not required.

In response to a question from Member Rich, the applicant explained that HOA bylaws did not allow a 6' privacy fence between neighbors. The external perimeter of the fence would be 6' high, and the section of fence on the east property line between the applicant's lot and the neighbor's lot would be 4' high. The front of the fence facing Kimberly Court would also be only 4' high.

In response to a question from Member King, the applicant explained that she lived on a busy street and she was proposing a 6' fence along Tuck to give additional privacy, and at the rear where there was an empty lot abutting hers to try to keep wildlife out of the property.

In response to a question from Member Rich, the applicant stated that she did not know of a technical reason why the pool equipment pad could not be placed at the northwest corner of the pool, but placing the pool equipment pad in the middle of the back yard would create usability and safety issues, and that the utilities, including a buried electrical wire and gas lines, would have to be extended across the pool to that location.

In response to a question from Member King, the applicant said that she had not discussed her proposal with her neighbors on the other side of the street, where there was an existing fence. Those neighbors were newer, and their fence was there before they purchased the home.

Member King noted that if the Board allowed the fence height variance, the location of the pool equipment pad would not be an issue in terms of visibility or noise, and that under the circumstances, including the existing 6' fence directly across the street to the south, he was inclined to approve the request.

**MOTION by King, support by Irvin**, in the matter of ZBA Case 9-22-5713, 30308 Kimberly Ct., Parcel I.D. 23-35-402-021, that the variances requested in order to install pool equipment/pad and a 6-foot high fence in an exterior side yard **be granted** as advertised:

1. A variance to permit pool equipment within a front yard setback required in the side yard of a corner lot.
2. A variance of two (2) feet and ten (10) inches to permit pool equipment to have a twenty- seven (27) foot, two (2) inch, front yard setback where a thirty (30) foot setback is required.
3. A 3-foot variance to the 3-foot height limit is requested to permit a 6-foot-high fence in the exterior side yard.

**Because:**

The petitioner did demonstrate practical difficulties exist in this case in that she set forth facts which show that:

1. Compliance with the strict letter of the ordinance would render conformity with the ordinance unnecessarily burdensome.
2. That granting the variance requested would do substantial justice to the petitioner in that this relaxation would give substantial relief to the owner of the property and be consistent with justice to other property owners where similar fences may exist already.
3. That the petitioner's plight is due to the unique circumstances of the property, particularly noting that this is a corner lot.

4. The problem is not self-created, in that the utility requirements suggest that the location is optimal for the pool equipment.

**With the following condition:**

1. The construction of the pad, pool and fence be as submitted, in that the materials will be as shown, and that the pad for the pool equipment, as well as the fence, will be placed in the locations as presented.

**Motion carried 6-1** by voice vote (Lindquist opposed).

**B. ZBA CASE: 9-22-5714**

LOCATION: 30830 Orchard Lake Rd.

PARCEL I.D.: 23-02-151-020

REQUEST: In a B-2 Zoning District, due to non-conformities resulting from the acquisition of right-of-way to implement the Orchard Lake Road Reconstruction project, the following variances are requested.

1. A variance of ten (ten) feet to permit a zero (0) -foot parking setback where a ten (10)-foot setback is required.

2. A variance of 6.5 percent to permit 13.5 percent front yard open space where twenty (20) percent is required.

3. A variance of ten (10) feet to permit a zero (0) -foot landscaped area abutting a street where ten (10) feet is required.

CODE SECTION: 34-3.5.2. J, 34-3.1.24. E, 34-3.5. V

APPLICANT: Board of County Road Commissioners of Oakland County

OWNER: Orchard Lake BJ Properties LLC c/o New Liberty Group

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property was located south of 14 Mile on Orchard Lake Road in a B-2 zoning district. The applicants were seeking to implement the Orchard Lake Road Reconstruction project.

Alma Sobo, Dickinson Wright, PLLC, was present as attorney on behalf of this application. Laura Kreps, Carlisle Wortman, Planner for the Road Commission, was also present.

Ms. Sobo made the following points:

- The variance request arose in connection with condemnation proceedings initiated by the Road Commission of Oakland County in connection with the Orchard Lake Reconstruction project, which consisted of the rehabilitation and reconstruction of about a quarter mile of Orchard Lake Road between 13 Mile Road and 14 Mile Road.
- The property at issue was the vacant Best Buy property. The owner of the property was named in a condemnation case that was pending in Oakland County Circuit Court. The owner was aware of the variance request and did not object to it.
- The variance request was necessitated by non-conformities resulting from the Road Commission's acquisition in connection with the project. The Orchard Lake Reconstruction project was currently underway, after significant deliberation and consideration by the Road Commission, the City of Farmington Hills, and others.
- The roundabout that would result from the project would improve vehicular and pedestrian safety in the corridor and would maintain access to the shopping centers east and west of Orchard Lake Road.

Ms. Kreps reviewed the request against the criteria for granting a variance:

- Practical difficulty was created by the public road improvement being constructed by the Road Commission for the purpose of improving vehicular and pedestrian safety and access to the retail shopping centers on both sides of Orchard Lake Road.
- The project was meant to preclude direct left turns in a high crash area located just south of 14 Mile Road. The situation was not created by the owner of the property, and was considered an exceptional and extraordinary circumstance that was not generally acceptable within the City of Farmington Hills and the B-2 Zoning District.
- There were other property owners along Orchard Lake Road that had the right of safe and convenient access to their property. The project would provide the same property rights of other owners in the district by improving vehicular and pedestrian safety and access to the strip mall itself.
- There were approximately 15 properties along Orchard Lake Road between 13 Mile Road and 14 Mile Road that already encroached within the setback requirement.
- The project would result in the reduction of the required 10' setback between the property's parking lot and the new right-of-way line to zero feet. The distance between the back of curb at Orchard Lake Road and the parking lot along the frontage of the property was between 18' and 31' in width, which provided a buffer in excess of the 10' minimum setback requirement. However, the greenbelt would be within the new right-of-way as served by the project.
- The variance would support the City's Future Land Use Plan for commercial use in the area.
- There were references in the Master Plan regarding transportation and traffic on Orchard Lake Road that supported the Road Commission's project and the resulting variances:
  - The Master Plan indicated that the Orchard Lake Road frontage between I-696 and 14 Mile Road presented many land use and traffic challenges.
  - The Master Plan stated that the current condition of Orchard Lake Road required improvement.
  - The Master Plan discussed the use of roundabouts and stated that the objective of a roundabout was to reduce traffic speeds and reduce the number and severity of crashes, while improving traffic flow.
  - The project and the resulting variances met the objectives described in the Master Plan.
- The Uniform Condemnation Procedures Act stated that the government entity having jurisdiction to grant the variances shall consider the potential benefits of public use for which the property would be acquired. The Zoning Board of Appeals shall consider the potential benefits of the proposed project in their review of the variance requests.

In response to a question from Chair Lindquist, City Attorney Morita explained that according to the condemnation statute, the Board should look at the benefits of the overall nature of the project when making a decision regarding the variance request.

In response to a question from Member King, Ms. Sobo acknowledged that the variance request was being made after the project had begun. They would have liked to come to the BZA sooner, but waited based on communications with counsel in this case.

In response to a question from Member O'Connell, Ms. Sobo explained that they had obtained an order of possession. The Road Commission had a permanent highway easement, and a temporary construction easement. They were required by law to obtain a variance to conform with all regulations. She was aware that the request appeared not to be timely, but timeliness was not a factor in whether variance requests should be granted.

In response to a question from Member Rich, City Attorney Morita advised that ongoing condemnation litigation and the timeliness of the variance request should not be considered by the Board when making a decision whether the variance requests were granted.

In response to a question from Chair Lindquist, Ms. Sobo said that the applicant had the title for the property, and the only issue remaining in the condemnation case was just compensation owed to the property owner.

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

Secretary O'Connell said there was an affidavit of mailing with no returns.

Board discussion:

In response to a question from Member Rich, Ms. Kreps explained that typically the greenbelt buffer would be measured from the right-of-way to the parking area. The greenbelt buffer will be 18'-31', but will be within the new right-of-way.

In response to a question from Chair Lindquist, City Attorney Morita said that in addition to considering the overall benefits of the plan, the Board could consider other aspects of the plan. However, the Board had no reason to dispute the statements from Carlisle Wortman which outlined the safety impact of the traffic circle.

Chair Lindquist noted that the greenbelt would be maintained by the Road Commission.

**MOTION by Rich, support by O'Connell**, in the matter of ZBA Case 9-22-5714, 30830 Orchard Lake Road, Parcel I.D. 23-02-151-020, that the request for the following variances **be granted**, due to non-conformities resulting from the acquisition of right-of-way to implement the Orchard Lake Road Reconstruction project:

1. A variance of ten (ten) feet to permit a zero (0) -foot parking setback where a ten (10)-foot setback is required.
2. A variance of 6.5 percent to permit 13.5 percent front yard open space where twenty (20) percent is required.
3. A variance of ten (10) feet to permit a zero (0)-foot landscaped area abutting a street where ten (10) feet is required.

**Because:**

The petitioner 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 render conformance with the ordinance unnecessarily burdensome.
2. That granting the variance requested does do substantial justice to the petitioner as well as to other property owners in the district, for the various reasons cited in the application including increased safety, better traffic flow, and so on. There is substantial justice to the property owner, because the owner would otherwise have to reconfigure their property after a taking by the Road Commission that they had no say in approving. The owner needs safe ingress and egress onto the property.

3. That the petitioner's plight is due to the unique circumstances of the property, in that this is a fairly unique area in the City, both in terms of traffic, setbacks, surrounding properties, and so on.
4. The problem is not self-created.

**With the following findings and conditions:**

1. The greenbelt will remain, albeit in the right-of-way, and will be maintained by the Road Commission for Oakland County.
2. The layout of the new road and roundabout will be consistent with what has been submitted to the Board for tonight's meeting.

**Motion carried unanimously by voice vote.**

- C. ZBA CASE: 9-22-5715**  
**LOCATION:** 30800 Orchard Lake Rd.  
**PARCEL I.D.:** 23-02-151-018  
**REQUEST:** In a B-2 Zoning District, due to non-conformities resulting from the acquisition of right-of-way to implement the Orchard Lake Road Reconstruction project, the following variances are requested.
1. A variance of one (1) space, to permit 374 parking spaces where 375 spaces are required.
  2. A variance of ten (ten) feet, to permit a zero (0) -foot parking setback where a ten (10) -foot setback is required.
  3. A variance of 7.45 percent to permit 12.55 percent front yard open space where twenty (20) percent open space is required.
  4. A variance of ten (10) feet to permit a zero (0) -foot landscaped area abutting a street where ten (10) feet is required.
- CODE SECTION:** 34-5.2.11, 34-5.5.2. J, 34-3.1.24. E, 34-3.5. V  
**APPLICANT:** Board of County Road Commissioners of Oakland County  
**OWNER:** ATMF VI, LLC Bloomfield Hills, Michigan

Using a PowerPoint presentation, Zoning Supervisor Randt reviewed the facts of the case. The property was located south of 14 Mile on Orchard Lake Road in a B-2 zoning district. The applicants were seeking to implement the Orchard Lake Road Reconstruction project.

Alma Sobo, Dickinson Wright, PLLC, was present as attorney on behalf of this application. Laura Kreps, Carlisle Wortman, Planner for the Road Commission, was also present.

Attorney Jason Long, representing ATMF, was present in the audience.

Ms. Kreps reviewed the request against the criteria for granting a variance:

- The variance request arose in connection with condemnation proceedings initiated by the Road Commission of Oakland County in connection with the Orchard Lake Reconstruction project, which consisted of the rehabilitation and reconstruction of about a quarter of a mile of Orchard Lake Road between 13 Mile Road and 14 Mile Road.
- The property was the site of an Aldi, a Burlington Coat Factory, and a Party City.

Ms. Kreps made the following points:

- Practical difficulty was created by the public road improvement being constructed by the Road Commission for the purpose of improving vehicular and pedestrian safety and access to the property as well as the neighboring property.
- The variances for this case were the same as Case 9-22-5714, except for the variance of one parking space, which was minor relative to the total number of parking spaces.
- There were approximately 15 properties along Orchard Lake Road between 13 Mile Road and 14 Mile Road that already encroached within the setback requirement.
- There were references in the Master Plan regarding transportation and traffic on Orchard Lake Road that supported the Road Commission's project and the resulting variances:
  - The Master Plan indicated that the Orchard Lake Road frontage between I-696 and 14 Mile Road presented many land use and traffic challenges.
  - The Master Plan stated that the current condition of Orchard Lake Road required improvement.
  - The Master Plan discussed the use of roundabouts and stated that the objective of a roundabout was to reduce traffic speeds and reduce the number and severity of crashes, while improving traffic flow.
  - The project and the resulting variances met the objectives described in the Master Plan.
- The Uniform Condemnation Procedures Act stated that the government entity having jurisdiction to grant the variances shall consider the potential benefits of public use for which the property would be acquired. The Zoning Board of Appeals shall consider the potential benefits of the proposed project in their review of the variance requests.

In response to a question from Member Vergun, Ms. Kreps explained that another variance package had been submitted regarding the property for the west side of the roundabout.

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

Secretary O'Connell said there was an affidavit of mailing with no returns.

**MOTION by Rich, support by O'Connell**, in the matter of ZBA Case 9-22-5715, 30800 Orchard Lake Road, Parcel I.D. 23-02-151-018, that the request for the following variances **be granted**, due to non-conformities resulting from the acquisition of right-of-way to implement the Orchard Lake Road Reconstruction project:

1. A variance of one (1) space, to permit 374 parking spaces where 375 spaces are required.
2. A variance of ten (ten) feet, to permit a zero (0) -foot parking setback where a ten (10) -foot setback is required.
3. A variance of 7.45 percent to permit 12.55 percent front yard open space where twenty (20) percent open space is required.
4. A variance of ten (10) feet to permit a zero (0) -foot landscaped area abutting a street where ten (10) feet is required.

**Because:**

The petitioner 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 render conformance with the ordinance unnecessarily burdensome.



2. That granting the variance requested does 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. The problem is not self-created.

**With the following finding and conditions:**

1. The greenbelt will be maintained by the Road Commission of Oakland County.
2. The layout of the new road and roundabout will be consistent with the plans that have been submitted to the Board for tonight's meeting.

**Motion carried unanimously by voice vote.**

**PUBLIC QUESTIONS AND COMMENTS:**

A resident asked questions regarding certain road projects, and was directed to contact the City Manager's office or City Council.

**APPROVAL OF MINUTES** July 12, 2022

Postponed.

**DISCUSSION**

A training session was being planned for the Board. City Attorney Morita asked Board members to email her with any dates they might be out of town from November to March so that the training session could be scheduled when everyone was available.

**ADJOURNMENT**

**MOTION by Vergun, support by Irvin, to adjourn the meeting at 9:01 p.m.**

**Motion approved unanimously.**

Respectfully submitted,  
Michael O'Connell, Secretary

/cem