

**MINUTES
CITY OF FARMINGTON HILLS
PLANNING COMMISSION REGULAR MEETING
FARMINGTON HILLS CITY HALL – COUNCIL CHAMBERS
MAY 19, 2016, 7:30 P.M.**

Chair Rae-O'Donnell called the Planning Commission meeting to order at 7:30 p.m. on May 19, 2016.

Commissioners Present: Blizman, Fleischhacker, McRae, Orr, Rae-O'Donnell, Schwartz, Stimson, Topper

Commissioners Absent: Mantey

Others Present: Staff Planner Stec, City Engineer Darnall, City Attorney Gillam, Planning Consultants Arroyo and Tangari

APPROVAL OF AGENDA

MOTION by McRae, support by Blizman, to approve the agenda as published.

Motion carried unanimously.

REGULAR MEETING

A. SITE AND LANDSCAPE PLAN 56-4-2016

LOCATION:	26375 Halsted Rd.
PARCEL I.D.:	22-23-18-476-001
PROPOSAL:	Addition of new Leasing Office for existing apartments in RC-2, Multiple Family Residential District
ACTION REQUESTED:	Approval of Site and Landscape Plan
APPLICANT:	Foxpointe Townhouses LTD. Partnership
OWNER:	Foxpointe Partnership

Referring to the Clearzoning review letter of May 11, 2016, Planning Consultant Tangari gave the background for this application, which was a request to construct a new office and community exercise building within the Foxpointe Development.

Planning Consultant Tangari gave the location of the subject parcel, and reviewed the surrounding zoning and land uses. The existing site was already a townhome development and the request was for a modification at the center of the site. The applicant was proposing to construct a 1,950-square-foot building to house offices and a community exercise facility. Five new parking spaces were also proposed. An existing tennis court would be removed to accommodate the new building. Four landscape trees would also be removed.

Outstanding issues included:

- While the proposed building did not affect the front, rear, or north side yard setbacks, and the south side yard setback appeared to be easily met, as well as the required distance between this building and other buildings on site, setback distances were a required element of a site plan and were not listed on the plan. These must be included on future submissions.
- Given the existing parking and the fact that this facility was for the use of residents of Foxpointe only, the applicant and Planning Commission should consider whether the additional spaces were necessary.
- The applicant should confirm that no exterior lighting was proposed or provide details for exterior lighting, including any building-mounted fixtures.

- There were minor issues with the landscape plan. Among those were the four crabapples ranging from 6” – 10” that were proposed to be removed for additional parking. Those trees were located on the survey but not identified.

Planning Consultant Tangari concluded his review.

Staff Planner Stec called the Commission’s attention to sheets A.101 and A.102 which showed the floor plan and elevations of the proposed building.

Chair Rae-O’Donnell invited the applicant to speak.

Al Valentine, GAV Associates, 24001 Orchard Lake Road, Farmington MI, was present on behalf of this application. Mr. Valentine said the added parking was necessary in order to provide parking close to the new building. He noted that they were losing impervious land since the tennis court was being removed, and this would be mostly replaced by landscaping. They would resolve issues with the tree survey and make sure the setback dimensions were on the site plan going forward.

Commissioner Orr asked if it would be possible to use pavers or other pervious materials for the additional parking spaces, rather than bringing in asphalt for those five spaces. Only one space – for handicapped parking – needed to be impervious. Mr. Valentine said they could look at this.

Seeing that discussion had ended, Chair Rae-O’Donnell brought the matter back to the Commission.

Motion by Orr, support by Blizman, that Site Plan No. 56-4-2016, dated April 14, 2016, submitted by Foxpointe Partnership be approved because it appears to meet all applicable requirements of the Zoning Chapter, subject to:

1. A revised site plan addressing the following items be submitted for administrative review:

- **The plan be revised to address the items identified in the May 11, 2016 Clearzoning review report**
- **Complete details on all new exterior lighting be provided**
- **Setbacks for the new building be provided**
- **Permeable pavement be considered for new parking spaces**
- **The four 6” – 10” crabapple trees proposed for removal be identified on the tree survey**

Motion carried 8-0.

Motion by Orr, support by Blizman, that Landscape Plan No. 56-4-2016, dated April 14, 2016, submitted by Foxpointe Partnership be approved because it appears to meet all applicable Zoning Chapter requirements and applicable Design Principles as adopted by the Planning Commission, subject to:

1. A revised site plan addressing the following items be submitted for administrative review:

- **The four 6” – 10” crabapple trees proposed for removal be identified on the tree survey**
- **The plan be revised to address the items identified in the May 11, 2016 clearzoning review report**

Motion carried 8-0.

B. SITE AND LANDSCAPE PLAN 57-4-2016

LOCATION: 25281 Orchard Lake Rd.
PARCEL I.D.: 22-23-22-476-043

PROPOSAL: Tim Hortons restaurant with drive through in B-3,
General Business District
ACTION REQUESTED: Approval of Site and Landscape Plan
APPLICANT: Michael Jwaida
OWNER: Jwaida Oraha Group, LLC

Referring to the Clearzoning review letter dated May 11, 2016, Planning Consultant Arroyo gave the background for this application, which was a request to construct a new Tim Hortons with a drive-thru at 25281 Orchard Lake Road. The property was zoned B-3 with an OS-2 Planned Office Service property to the north. RA-1 Single family residential abutted the subject parcel to the west.

Planning Consultant Arroyo noted that drive-thru restaurants were not permitted to abut an RA district unless the district was separated from the lot by a major or secondary thoroughfare. Therefore, this application would require a use variance from the Zoning Board of Appeals in order to move forward.

Planning Consultant Arroyo said he would review other site related items. Comments and outstanding issues included:

- A cross access marginal access easement did exist across the front of this property and the properties to the south and north. The site plan needed to be corrected to show the cross access easement.
- The location of the proposed sign was in the cross-access easement and could not be at that location. However, signs were approved under a separate permit and should not be shown on the plan.
- The plan showed that cross-access was also available to the parcel to the south via a rear alley, with potential access all the way down to 10 Mile Road. Evidence for cross-access easements in this location needed to be provided. Were easements already in place or would new easements be necessary?
- Most dimensional requirements (front yard, rear yard/residential district, side yard, and calculation of front yard open space) had not been provided. While there did not appear to be an issue meeting these requirements, they did need to be provided.
- No square footage was given for the loading and unloading spaces. Again, there did not appear to be an issue meeting requirements but the true square footage of this area must be provided on the plan.
- 30 parking spaces were provided, 9 of which were partially on Parcel 2. Therefore, a variance from the Zoning Board of Appeals from the parking requirement would be required.
- The relationship of the parcels needed to be discussed. Would they be retained as single ownership? Would they function as one zoning lot? If they were choosing to use some of the parking spaces on the other parcel, the applicant needed to demonstrate that the other parcel could stand on its own regarding ordinance requirements for parking. Parking calculations for the use to the south would need to be presented. Both parcels needed to stand on their own in terms of meeting ordinance requirements.
- Regarding circulation, the maneuvering lane on the north side of the building was 12 feet, 2 inches wide. The standard for maneuvering lane width for 60-degree diagonal spaces was 15 feet. If the building were shifted two feet south, and the drive-thru lanes were reduced to a width of 9 feet (the minimum required width), there was room to meet the requirements.
- Additional information was needed to make sure exterior lighting ordinance requirements were met. No uniformity ratio as required by Section 34-5.16 was provided.
- A 6-foot wall was required along the rear property line. No wall was proposed.
- An outdoor seating area was proposed. A setback measurement was not given and must be provided. The outdoor dining space was located approximately 150 feet from the RA-1 district property line. A variance would also be required for this location, as the outdoor space should be located at least 200 feet from the residential district. A true measurement was needed to know the exact variance required.

- Exterior lighting needed to meet standards set forth in Section 17-106 of the City Code. If exterior lighting was planned, the applicant must indicate the location and provide cut sheets.
- Planning Consultant Arroyo reviewed Section 34-4.35 *Drive-In Restaurants*. He re-iterated that the standard was *The zoning lot occupied by such use shall not abut an RA district unless the district is separated from the lot by a major or secondary thoroughfare*. Again, a use variance would be required in order for this application to go forward.
- There were a number of items in the landscape plan that needed to be clarified. Of particular importance was the requirement for a 6-foot-high berm or wall required along the western property line since this property abutted an RA-1 district. There was currently a row of evergreens that appeared to be on the neighboring property. The landscape plan showed a row of 30-inch globe arborvitae planted approximately 8 feet on center. He recommended the plan be revised to provide 6-foot arborvitae planted 36 inches on center to augment the existing evergreens and provide a lasting equivalent screen. Alternatively, the Planning Commission could require the 6-foot wall.
- Regarding the tree removal permit and plan, protective tree fencing notes and graphic detail must conform to City standards as outlined in Section 35-5.18.6.

Planning Consultant Arroyo concluded his review.

Commissioner Orr said that the order box faced southwest at the rear of the property. This would interfere with the use and enjoyment of the abutting residential property. He felt this was the wrong place for this type of establishment.

In response to a question from Commissioner Schwartz, City Attorney Gillam said that the Commission could deny tonight's request, as the proposed use was not a permitted use in the zoning district. Alternatively, the Commission could approve the request conditioned upon the applicant receiving a use variance and any other necessary variances from the Zoning Board of Appeals.

Planning Consultant Arroyo said that he was uncomfortable with an approval subject to the applicant receiving a use variance, especially with the issue of the use abutting a residential neighborhood. His suggestion was to deny the request. If the applicants chose to go to the ZBA, and were successful, then the Planning Commission could deal with mitigating the attendant issues of a drive-thru restaurant next to a residential neighborhood.

Commissioner McRae said he was inclined to deny the application as suggested. However, he did not agree with Commissioner Orr. He felt the particular area proposed for this use would benefit from this development. The City was interested in renovating the four corners at 10 Mile and Orchard Lake Road.

In response to a question from Commissioner Schwartz, Planning Consultant Arroyo said that if the restaurant did not have a drive-thru, the restaurant would be a permitted use. There would still be site-related issues as discussed.

Chair Rae-O'Donnell invited the applicant to make his presentation.

Ghassan Abdelnour, GAV Associates, 24001 Orchard Lake Road, Farmington MI, was present on behalf of this application. He said that except for the use variance they could resolve the issues as discussed this evening, including shifting the site plan and installing a wall, if necessary. This property and the property to the south were owned by the same owner, who would have no issues with providing cross-access agreements. They did talk to the residential neighbors, and the neighbors did not seem uncomfortable with the proposed use. Tim Hortons was developing a lower-sound speaker. Landscaping and parking issues could be resolved, especially because the properties were under the same ownership. The seating area in the front could be made smaller if necessary in order to meet parking requirements.

Commissioner Orr asked the hours of the drive-thru operation.

Michael Jwaida, owner, said that he operated the other Tim Hortons in Farmington Hills. The hours of the drive-thru operation would most likely be 4:00 a.m. to 11:00 p.m.; this would have to be confirmed with corporate Tim Hortons. It was also possible they could start the drive-thru operation at 5:00 a.m.

In response to a question from Commissioner Schwartz, Mr. Jwaida said that not having a drive-thru would not be a viable business operation for Tim Hortons.

Commissioner Blizman said the proposal had to be denied because the use was not permitted in the zoning district. He recommended that the applicant look closely at what they needed to do, per the Clearzoning review letter, should a use variance be granted.

Mr. Jwaida noted that the residential lot that abutted the property was vacant. The other neighbors seemed supportive of putting a Tim Hortons at this location.

Commissioner Schwartz said that the Planning Commission should not approve this application conditioned upon a successful granting of a use variance because a use variance had a high threshold.

Motion by Schwartz, support by McRae, that approval of Site Plan No. 57-4-2016, dated April 15, 2016, submitted by Michael Jwaida be denied for the following reasons:

- **A use variance is required to permit a drive-thru restaurant adjacent to an RA District**
- **A dimensional variance is required to permit accessory outdoor seating within 200 feet of a residential district**

Brief discussion was held regarding the details called out in the Clearzoning letter, including whether or not a wall would be required at the rear of the property. Commissioner McRae was in favor of landscaping instead of the wall. Commissioner Orr was in favor of requiring the wall in order to mitigate speaker sound.

Commissioner McRae emphasized that the Planning Commission did not have the ability to approve a use not permitted in the zoning district.

Motion carried 8-0.

No action was taken on the landscape plan since the site plan was denied.

C. SITE AND LANDSCAPE PLAN 58-4-2016

LOCATION:	28990 Orchard Lake Rd.
PARCEL I.D.:	22-23-11-101-034
PROPOSAL:	Addition of outdoor seating to proposed restaurant in B-4, Planned General Business District
ACTION REQUESTED:	Approval of Site and Landscape Plan
APPLICANT:	Tony Flores
OWNER:	Michael Gluck, Trustee

Referring to the Clearzoning review letter dated May 9, 2016, Planning Consultant Tangari gave the background for this application, which was a request to add an outdoor dining area to the front of an existing restaurant at 28990

Orchard Lake Road, roughly a quarter mile south of 13 Mile Road. The property was zoned B-4, Planned General Business.

Planning Consultant Tangari reviewed the surrounding zoning and land uses, including the RA-2B One-Family Residential District to the east. The neighboring residents were screened by an existing masonry wall.

The pre-existing restaurant shared a common wall with the building to the north, occupied by Mike's Cleaners. Parking was available in the front, side and rear yards of the property. The building was one story with 2,701 square feet of usable floor area. The property was approximately 0.68 acres, with 100 feet of frontage on Orchard Lake Road. The depth of the property was approximately 294.45 feet. This property did not have its own driveway. Cross access was available to neighboring properties.

The area where the work was proposed was currently asphalt and occupied by 10 parking spaces and a maneuvering lane. The maneuvering lane – currently adjacent to the building - was proposed to be moved to create an arrangement where no vehicles passed between the building and the outdoor dining area.

The proposed outdoor area would be surrounded by a 3-foot high metal fence, with seven raised brick planters that punctuated the fencing around the perimeter. Two new planting beds would replace asphalt, and one of those would protect a paver walkway along the edge of the dining area. The site's freestanding sign, which currently occupied part of a parking space, would be integrated into one of the new planting beds. The only change to the existing building was the addition of a door for access to the outdoor seating area.

Outstanding issues included:

- The plan showed the creation of two carryout parking spaces in front of the building. Those appeared to conflict with the existing parking spaces for Mike's Cleaners on the adjacent property. Also, those spaces required users to back out over 40 feet to reach an area where a motorist could turn to exit. This was unacceptable. Regardless of the end design, the applicant should provide a signed agreement with the neighbor that the arrangement was acceptable to both parties, and demonstrate that the loss of any parking spaces next door would not compromise the neighboring use's ability to meet parking requirements.

Planning Consultant Tangari noted that a new site plan had been handed to the Commission this evening that removed the two parking spaces in question and picked up another parking space on the north end.

- Dimensional requirements were met. Front yard open space calculations had been provided. The nonconforming side yard setback to the north was an existing condition.
- Rooftop equipment did not appear to be screened in accordance with Section 34-5.17. The Planning Commission could choose to accept this as an existing condition in the absence of major façade changes or require screening.
- Eight of the parking spaces counted on the plan appeared to be on the neighboring parcel. The applicant should provide evidence that those spaces were available for use by restaurant patrons, although the parking requirement was satisfied even without those spaces.
- No lighting changes were proposed; this should be confirmed this evening.
- The site still did not provide uninterrupted or marked pedestrian connections to the public sidewalk. The Planning Commission should decide whether to accept this as an existing condition or require the pedestrian connection.
- The proposed outdoor dining space was located 176 feet from the nearest residential property line; 200 feet was required. The building was between the dining area and the property line, affording an extra degree of protection. A variance of 24 feet would be required.
- If lighting was planned, the applicant must indicate the location and provide cut sheets.

- Minor site plan clean up issues were listed in item 16 on page 4 of the review letter.

Commissioner Schwartz wondered what would happen if joint parking were approved with Mike's Cleaners, and at some future date new uses went into the Mike's Cleaners space and even into the Camilla's space. Would this create a problem?

Planning Consultant Tangari said the restaurant exceeded the number of required parking spaces, even without the 8 spaces apparently on Mike's Cleaners property as mentioned in the review. This should not create a problem in the future.

Commissioner Orr confirmed with Staff Planner Stec that if new roof top equipment were added, the permit process would trigger rooftop screening review.

Chair Rae O'Donnell invited the applicant to speak.

Tony Flores, owner of Camilla's Restaurant and Grill, was present on behalf of this application, as was Harold Remlinger, Architect, Design Team +, 975 E Maple Road #210, Birmingham, MI 48009.

Mr. Remlinger said that they had received the comments from Clearzoning, and they had provided a packet for the Commission that included revisions and commentary based on the Clearzoning review. Interior renovations were already underway. They had spoken with the Fire Marshall and had removed parking spaces from against the window.

The two-way drive in front of the building was 23-feet, thus exceeding the 20-foot minimum. The building was being renovated under the Michigan Rehabilitation Code, Level II alteration, and thus would be considered grandfathered and not require sprinkler systems.

Mr. Remlinger addressed drainage issues as called out in the Engineering Division review, and showed the locations of catch basins on the site.

As already noted, they did remove the two parking spaces mentioned in Item 5 of the Clearzoning letter and added an additional space elsewhere. Forty-four parking spaces were required; 54 spaces were provided.

Regarding Item 6 in the review letter, 1200 square feet of front yard open space was required; just over 1300 square feet was provided currently. By adding in the additional landscaping, 1600.3 square feet of front yard open space would result, thus exceeding the requirement.

They did provide a front elevation showing the new access door leading to the outdoor seating.

Regarding Item 7 of the review letter, as they changed out rooftop equipment, they would add additional screening on an as-needed basis. There was currently a parapet in place.

Regarding item 10 of the review letter, the parking spaces in question were directly in front of the restaurant and not in front of the drycleaners. Also, the original Ram's Horn site plan showed those parking spaces as belonging to the Ram's Horn. Those spaces had always belonged to the restaurant.

Regarding Item 12 of the review letter, the catch basins were shown on Sheet 100.1. They would remain in the existing locations and would not be obstructed.

Regarding item 13 of the review letter, no additional parking lot lighting was requested. However, Camilla's would like to use some string lighting around the outdoor seating area. These would be small LED or incandescent lights, and would have no spillover onto the residential properties in the rear. At the time of resubmittal for the Commission or the ZBA, they would have any required cut sheets for lighting.

Regarding item 14 of the review letter, pedestrian connection to the public sidewalk was very difficult. No businesses along Orchard Lake Road had such a pedestrian connection. In most cases people were willing to walk 1/4 mile. The closest bus stop was just about 1/4 mile from this location, but bus riders would have to cross 13 Mile Road to get to the bus stop. The closest residents lived on a street with no sidewalk. The closest resident to the north was 2,003 feet walking distance from this location. The closest resident to the south was 1,012 feet. Therefore the applicants did not feel pedestrian connection needed to be addressed. They had made provisions interior to the site to protect patrons as they walked through the parking lot by creating a curbed area along two sides of the outdoor seating, which was a significant improvement from the wide-open space that was there currently.

Mr. Remlinger closed his comments by requesting approval of this application, conditioned on receiving a dimensional variance for the outdoor seating.

Commissioner Schwartz noted that there was a large crack in the wall behind the property – this needed to be repaired. He confirmed that the rubble behind the building was construction-related and would be removed.

Commissioner McRae asked if the hatched area closest to the building could be converted to a grassed landscaped area. Mr. Remlinger said they could do this.

Commissioner McRae said the application was for a site and landscape plan. However there did not appear to be a landscape plan submitted. Mr. Remlinger said that there was no additional landscaping requirement per the ordinance, and that was why no landscape plan had been submitted.

Commissioner Blizman thought the pedestrian access from the sidewalk should be required. Commissioner Stimson thought the pedestrian access could be accomplished by a simple striping from the sidewalk straight back to the north side of the outdoor seating and then on to the restaurant. Mr. Remlinger pointed out that any pedestrian access would conflict with traffic patterns – there was no way to avoid this. Planning Consultant Arroyo said this was a very difficult site to provide the pedestrian connection. He agreed with Mr. Remlinger that any pedestrian access would be in direct conflict with vehicular traffic patterns. Commissioner McRae thought the pedestrian access should not be required in this case.

Chair Rae-O'Donnell indicated she was ready for a motion.

Motion by Fleischhacker, support by Orr, that Site Plan No. 58-4-2016, dated April 18, 2016, amended May 19, 2016 as submitted this evening, submitted by Tony Flores by approved because it appears to meet all applicable requirements of the Zoning Chapter, subject to the following conditions:

- 1. A revised site plan addressing the following items be submitted for administrative review:**
 - The items identified in the May 9, 2016 clearzoning review report be resolved**
 - The area located at the northwest corner of the building and striped for no parking be converted to a landscape island**
 - Details be provided showing that any new lighting is in compliance with ordinance standards**
- 2. A dimensional variance to permit an accessory outdoor seating area within 176' of a residential district is granted by the Zoning Board of Appeals**

The following determinations were also made:

- **The existing screening of roof-top units is acceptable, any new or replacement units will require proper screening at the time they are installed**
- **The pedestrian connection from the public right-of-way is waived**

Landscape Plan: It was determined that the landscaping as presented on the site plan is acceptable

Motion carried 8-0.

D. LOT SPLIT 1, 2016 (Final)

LOCATION:	East side of Tuck Rd., north of 21160 Tuck Rd.
PARCEL I.D.:	22-23-35-402-001
PROPOSAL:	Split existing parcel into two (2) parcels in RA-3, One Family Residential District
ACTION REQUESTED:	Approval of final land division
APPLICANT:	Terry Sever
OWNER:	Crosswind Court Corp., Leo Soave

Referring to the Clearzoning review letter of May 11, 2016, Planning Consultant Tangari gave the background for this application, which was for final approval of Lot Split 1, 2016 along with Lot Split 2, 2016 (below) in order to permit three lots.

Planning Consultant Tangari noted that splits were previously approved for this site on January 21, 2016. The applicant was requesting that the original approval be rescinded in favor of tonight's proposal. The reason the applicant did not move forward with the original lot splits was that those approvals were contingent on the road being built into the platted subdivision. This was not going to happen, so the lots to the east made no sense to split anymore. What the applicants were now proposing was to take the two existing lots that fronted on Tuck Road and split them in order to have three lots.

Planning Consultant Tangari further explained the location of the parcels, along with the surrounding zoning and uses. The two properties together totaled 1.75 acres. A home with an associated detached garage and driveway was on the site. Most of the development was on Lot 14, but the garage and driveway both crossed the existing property line onto Lot 13. If the proposed final configuration of three parcels were approved, the home, the garage and driveway would all be on the same parcel.

The only outstanding issue was that the Planning Commission should request documentation to confirm that the setbacks of the existing structures within the proposed new parcels met ordinance requirements.

Commissioner Orr asked if any variances were attached to the original lot splits approved January 21, 2016. Planning Consultant Tangari said no variances were part of that action.

In response to a further question from Commissioner Orr, Planning Consultant Tangari said that the parcels were compared to other parcels in the area on pages 4-5 of the review letter. The lots resulting from this lot split would be a little deeper than adjoining lots. Other than that they were similar in size.

Planning Consultant Arroyo said that during preliminary review for this application, the Engineering Department had indicated that they would look for an additional 5 feet right of way on Kentfield and additional 10 feet on Tuck in order to bring the lots into further compliance.

Following a discussion of process, Chair Rae-O'Donnell invited the applicant to speak.

Terry Sever, 1883 Teakwood, White Lake Township, was present on behalf of this application. He explained that the 3 lots resulting from the two requested lot splits would exceed minimum dimensional requirements. The middle lot was larger in order to meet setback requirements for the existing structures.

In order to clarify the record, Mr. Sever requested a motion to rescind the previous lot splits as described, and requested new approval of the lot splits as requested.

Chair Rae-O'Donnell indicated she was ready for a motion.

Motion by Schwartz, support by Fleischhacker, that the Lot Splits granted on January 21, 2016, for Final Lot Split 6, 2015, Final Lot Split 7, 2015, Final Lot Split 8, 2015 and Final Lot Split 9, 2015 be rescinded.

Motion carried 8-0.

Motion by Orr, support by Fleischhacker, that Final Lot Split 1, 2016, submitted by Terry Sever be approved because it appears to meet applicable provisions of the Zoning Chapter and of Chapter 27, Subdivision of Land, of the City Code and will result in land parcels which are generally compatible with surrounding lots in the area; and that the City Assessor be so notified, subject to the following conditions:

- **The resulting nonconforming parcel be joined with the resulting nonconforming parcel that will be formed by the next motion regarding Final Lot Split 2, 2016**
- **Setbacks of the existing buildings be shown on the land division plan, and that existing buildings be confirmed to be compliant with setback requirements**

Commissioner McRae said he was uncomfortable with the wording of the motion, and would vote against it, though he was not opposed to the actual lot split going forward.

Motion carried 7-1 (McRae opposed).

E. LOT SPLIT 2, 2016 (Final)

LOCATION:	21160 Tuck Rd.
PARCEL I.D.:	22-23-35-402-002
PROPOSAL:	Split existing parcel into two (2) parcels in RA-3, One Family Residential District
ACTION REQUESTED:	Approval of final land division
APPLICANT:	Terry Sever
OWNER:	Crosswind Court Corp., Leo Soave

Motion by Orr, support by McRae, that Final Lot Split 2, 2016, submitted by Terry Sever be approved because it appears to meet applicable provisions of the Zoning Chapter and of Chapter 27, Subdivision of Land, of the City Code and will result in land parcels which are generally compatible with surrounding lots in the area, and that the City Assessor be so notified, subject to the following conditions:

- **Verification of setbacks for existing structures be shown on the survey**
- **Combination of the noncompliant parcel with the noncompliant parcel created by Final Lot Split 1, 2016, and the resulting combined lot be shown in the survey presented**

Motion carried 8-0.

F. LOT SPLIT 3, 2016 (Final)

LOCATION:	27839 Orchard Lake Rd.
PARCEL I.D.:	22-23-10-476-066
PROPOSAL:	Split existing parcel into two (2) parcels in B-4, Planned General Business District
ACTION REQUESTED:	Approval of final land division
APPLICANT:	Orchard 12, LLC
OWNER:	Orchard 12, LLC

Referring to the Clearzoning review letter dated April 22, 2016, Planning Consultant Arroyo gave the background for this application, which was for final review to permit two lots.

This parcel was part of an approved Planned Unit Development (PUD) for a shopping center with 3 buildings, along with a Starbucks and an approved retail building, both of which were on separate parcels. The PUD had a split zoning – mostly B4 but the Starbucks portion was zoned B-3.

Planning Consultant Arroyo called out the following issues:

- Item 5 of the review letter: Yards and Setbacks. The existing parcel fronted on both Orchard Lake and 12 Mile Roads. Under the proposed split, each new parcel would front on only one road. The required front setback of 120 feet was not met for the west building facing 12 Mile Road, which was a pre-existing condition prior to the PUD approval. The 60-foot setback requirement for Starbucks was not met but was waived as part of the PUD approval. Parcel 2 met the 20-foot rear setback requirement. Parcel 1 did not meet the rear setback requirement, as the new proposed property line passed less than 20 feet from what was now the rear of the building. Therefore the proposed split did not meet all setback standards of the district. However, if the development continued to be treated as a unified project (one zoning lot), no further action was necessary with regard to setbacks. He deferred to the city attorney as to whether the PUD approval waived the rear setback requirement for Parcel 1.
- Item 7 of the review letter: Cross Access. The new property line would be drawn through the parking lot of the shopping center. Cross access easements must be provided in all locations where vehicular circulation required that users of one parcel must cross onto the other parcel to access public rights-of-way. Those easements must be shown on the plan. If an agreement for a blanket easement was reached, this should be noted on the plan.
- It would be helpful to know the status of the building that was proposed along 12 Mile Road that was not yet built. This was a small strip commercial building that was part of the original PUD.

City Attorney Gillam said that as already indicated, this property was subject to a PUD agreement. The purpose of a PUD agreement was to provide some give and take, in the form of a waiver of certain standard zoning requirements in exchange for an overall greater benefit for the community. The question that was flagged in the Clearzoning review was that by creating certain nonconformities including setbacks between a couple of buildings on the site by the proposed split, was this something that would require an actual amendment to the PUD? While none of the buildings were being physically relocated, it was his opinion that this proposed change did require an amendment to the PUD, because by virtue of the proposed actions a need for a variance was being created that did not exist before. It was essentially the same as if the applicants were looking to expand the physical dimensions of a building into a setback area – it had the same effect. Therefore this was something that would require an amendment to the PUD.

City Attorney Gillam continued that some PUD agreements themselves provided for alternative procedures for an amendment to the PUD. This PUD agreement did not do that. The amendment process in this agreement was to

default to the zoning ordinance. Section 34-3.20 read, in part: *Proposed amendments or changes to an approved PUD plan shall be submitted to the planning commission. The planning commission shall determine whether the proposed modification is of such minor nature as not to violate the area and density requirements or to affect the overall character of the plan, and in such event may approve or deny the proposed amendment. If the planning commission determines the proposed amendment is material in nature, the amendment shall be reviewed by the planning commission and city council in accordance with the provisions and procedures of this section as they relate to final approval of the Planned Unit Development.*

City Attorney Gillam said that if the Commission decided the request was a minor modification, the Planning Commission could tonight approve an amendment to the PUD to waive the setback requirements that would be put into place if the split was granted. On the other hand, if the Planning Commission determined this was not a minor modification, then the formal PUD process would go forward, which would involve a separate meeting by the Planning Commission with a recommendation to City Council.

City Attorney Gillam said his position was this did appear to be a minor modification and was something the Planning Commission could act on tonight. If the Planning Commission agreed that this was a minor amendment then the Commission could approve an amendment to allow the proposed setbacks, and there would be a motion to approve an amendment to the PUD. Once the amendment to the PUD was approved, then the Planning Commission could address the proposed lot split.

Commissioner Orr asked what would happen to the landscaping requirements should the action go forward this evening. Staff Planner Stec explained the entire site would be subject to the PUD plan. Nothing was physically changing on the site. If the applicants did want to physically change anything, they would have to return for a full PUD amendment process before the Planning Commission and City Council.

Commissioner Orr raised the issue of a 3-hour fire barrier on the west wall of the far north building, which would be abutting the new property line.

Commissioner Schwartz asked several questions: How would the requested lot split affect the development of the outbuilding previously approved in the PUD? Why didn't this issue get raised a year ago when there were several meetings on this PUD? In hindsight, there did not seem to be enough parking for the building on 12 Mile Road (not yet built). There wasn't enough parking now. The Commission needed to know why the applicants wanted this lot split. Was it going to change anything regarding the development? The Commission had spent a lot of time on this proposal when it was previously approved.

Commissioner Blizman confirmed that the 20-foot setback deficiency for Parcel 1 would be created because of the lot split.

Planning Consultant Tangari said that this setback deficiency would not have any impact on any property other than itself. This was an internal setback requirement. The lot split would create a nonconforming noncompliant internal setback.

Chair Rae-O'Donnell invited the applicant to speak.

Kevin Navaroli, Nowak & Fraus Engineers, 46777 Woodward Avenue, Pontiac MI was present on behalf of this application. He explained that the reason for this lot split request was for financing purposes in order to remodel the buildings. They were not planning on any additions. With the refinancing, they would use part of the capital funding in order to start the project that was proposed on the empty lot.

In response to a comment from Planning Consultant Arroyo, Mr. Navaroli said the property line would be one foot off the new building.

Commissioner Blizman asked if this would not then create another setback issue.

Planning Consultant Arroyo explained the property line drawn next to the proposed building was not at issue tonight because that property line already existed and was part of the original PUD approval.

Commissioner Topper said that when the PUD had come before the Planning Commission previously, the outlot parcel had been reviewed and approved as part of that PUD agreement. Would the Planning Commission review the proposed construction of the outlot building?

Staff Planner Stec said that new building would come before the Planning Commission as part of the final site plan review. City Attorney Gillam advised that the site plan would be governed by the terms of the PUD agreement.

Mr. Navaroli affirmed that the outlot would not be affected by the proposed lot split.

Commissioner Schwartz said that he was uncomfortable with moving forward. It seemed like information was being presented piecemeal. The Commission needed to know exactly what the applicants were doing and what they were getting. He would like to see a parking study to see if there were enough spaces for another use on this site. If the applicants wanted a concession via this lot split, the Commission needed to know what they were ultimately approving. He did not think there would be enough parking for the outlot building. He felt the Commission needed to deal with this request "as a package." The applicants needed to bring something more complete. Also he did not understand how the Commission could vote knowingly to create a nonconformity.

Commissioner Fleischhacker wondered if the owners, who lived in Florida, had been in Michigan to observe this development. The development was doing well and often the parking lot was jammed, especially at night, when many people parked exactly where the proposed building would be constructed. He was concerned that not enough parking would be left and the lack of parking would harm the businesses in the strip mall, especially Craft Brew City. Parking was already lost when Starbucks was constructed. He asked that the applicant actually appear before the Planning Commission.

Commissioner Orr was concerned with having a building that touched the property line. At some future date a new developer could use the wall as an inside wall. He didn't think the Commission could approve the lot split without knowing what the construction was of the wall on the far north building, west side. He agreed that parking was going to be an issue. He was not comfortable with the piecemeal way the application was being presented to the Commission.

Staff Planner Stec pointed out that the issue of the construction of a new building was part of the approved PUD plan. The applicants did have the right to move forward with the construction of that building as long as it was in conformance with the PUD agreement.

Commissioner McRae said that whether the property was split or not was not going to change whether the applicants came forward with a plan to construct the new building that fit within the parameters of the PUD. He agreed the parking lot was too crowded.

Chair Rae-O'Donnell indicated she was ready for a motion.

Motion by Schwartz, support by Orr, that Final Lot Split 3, 2016, submitted by Orchard 12, LLC be postponed to a future date, so that the applicant can provide further information that would allow the Planning Commission to evaluate whether or not this proposal is a minor modification of the existing PUD, including:

- **Provide specific plans as to how the outlot will be developed, including a day and night parking study to evaluate whether the development can handle development of the outlot**
- **Clarify the fire rating of the west wall of the farthest north building that would directly abut the new property line**

Commissioner Fleischhacker said that he understood that the proposed building was part of the proposed PUD. However, now the applicants had come to the Commission asking for a lot split in order to get funding to move that building forward. He wanted to hear from the applicants that if they were granted the lot split, they could demonstrate that there was enough parking so that existing businesses would not be harmed by a lack of parking. The owners lived in Florida. The development had been very successful, but a lack of parking could harm that success.

Commissioner Topper asked if the separate parcels resulting from the lot split could be sold to different owners. Staff Planner Stec said that even if the parcels were under different owners, the parcels would still be subject to the PUD agreement.

Commissioner Schwartz said he did not view this request as a minor modification. As with PUD agreements generally, if the applicant wanted something, then the City also wanted something. There was an original parking study, but now there were facts on the ground. The lot split effectively ensured that the outlot would be built, which could be detrimental to the development as a whole. The owners might not realize the danger because they were never here.

Commissioner Blizman said this was not a simple lot split, because of the issue of the proposed outlot building. It did not seem like a minor modification.

City Attorney Gillam said that he was hearing that more information was needed before a determination was made as to whether this was a minor modification. If the Commission already felt, however, that this was not a minor modification, that determination could be made tonight. Then the request would have to go through a formal PUD amendment process.

Commissioner Schwartz said his motion was to postpone a decision, to give the applicant time to come back with a complete discussion of what was exactly planned on the outlot. The applicant needed to get a day and night parking study by a 3rd party. The Commission would then have a whole picture and be able to make this determination.

A brief discussion of process followed. The applicant would need to agree to the postponement in order to allow a decision to be made after the legal deadline for a lot split decision.

Mr. Navaroli agreed to this postponement.

Chair Rae-O'Donnell called the motion.

Motion carried 8-0.

APPROVAL OF MINUTES:

April 14, 2016 and April 21, 2016

MOTION by Stimson, support by Fleischhacker to approve the minutes of April 14, 2016 and April 21, 2016 as published.

Motion carried unanimously.

PUBLIC COMMENTS None

COMMISSIONERS' COMMENTS

Regarding the issue of signs in the April 14 2016 minutes, Commissioner Orr said that there were signs and there were displays. Placing boxes of beer in the windows effectively acted as both. Was there a mechanism that referred to a display as opposed to a sign?

Staff Planner Stec that currently displays were not considered to be signs. Commissioner Orr asked that this be considered.

Commissioner Blizman said that the Urgent Care sign across from the PARS restaurant on Orchard Lake Road was very distracting at night.

Commissioner Blizman noted that former Commissioner Shari Garms had passed away. There would be a memorial service in the west chapel at Holy Sepulchre Cemetery at 10:30 on Saturday.

Commissioner Stimson said that since Kmart was closing, it would be a good time to discuss that property's future. The property was a Special Planning Area, but was not part of the existing PUD that included Home Depot and Sam's Club.

Commissioner Fleischhacker said that the C'est La Vie Sign on Orchard Lake Road was changing more quickly than every 30 seconds.

Commissioner Schwartz suggested that the Planning Commission study the Harrison High School site, since it was scheduled to close in 4 years. Perhaps the City could request a joint meeting with the School Board regarding the future use of this property.

June meetings were set for June 9th and 16th.

Noting that this was Mara Topper's last meeting, the Commissioners individually thanked Commissioner Topper for her years on the Commission and her service as Chair. Chair Rae-O'Donnell also thanked Commissioner Topper for her sense of humor as she served. Commissioner Topper thanked everyone, and said that she truly "loved you all."

ADJOURNMENT

Seeing that there was no further discussion, Chair Rae-O'Donnell adjourned the meeting at 9:43 p.m.

Respectfully submitted,

**Steven Schwartz
Planning Commission Secretary**