

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
MARCH 17, 2020**

CALL MEETING TO ORDER

Chair Vergun called the meeting to order at 7:30 P.M. and made standard introductory remarks explaining the formal procedure, courtesies and right of appeal.

ROLL CALL

The Recording Secretary called the roll.

Members Present: **Barnette, Masood, Seelye, Rich, Vergun**

Members Absent: **King, Lindquist**

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

SITE VISIT March 15, 2020

Chair Vergun noted when the Zoning Board of Appeals members visited the site.

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, is only for informational purposes; the Board members abstain from any action, hearing testimony, or any deliberations.

APPROVAL OF AGENDA

MOTION by Seelye, support by Barnette, to approve the agenda as published.

MOTION CARRIED 5-0.

NEW BUSINESS

- A. ZBA CASE: 3-20-5666
 LOCATION: 32906 Middlebelt
 PARCEL I.D.: 23-01-101-075
 REQUEST: Permission for temporary outdoor sales of plants/materials in a B-2, P-1 Zoning District that cannot exceed the allowed 14 consecutive days and a total of 28 days during any 12 month period during May and June 2020. This will entail the use of a 60 foot by 40 foot tent (approximately). The 2020 set-up starts April 20th with take down/clean-up to finish July 20th.
 CODE SECTION: 34-3.26.14.D.; 34-7.14.6.
 APPLICANT: Johnny Pomodoro's Fresh Market, L.L.C.
 OWNER: Broadway Plaza Acquisitions, L.L.C.

City Attorney Morita said that Member Rich had raised some issues with her office regarding this case prior to tonight's meeting. After researching the matter, and after discussing the matter with the Planning Director, she offered the following information:

Tonight's request is for temporary outdoor sales. Temporary outdoor sales are specifically permitted by City Ordinance Chapter 22, Article V, Division 1, Sections 22-101 through 22-105, provided the applicant obtains a license from the City Clerk's office as required by Chapter 22, Article V, Division 2 and provided the sale meets the time restrictions in Zoning Ordinance Section 34-3.26.14.D, as well as other requirements in the City's ordinances. If the sale being proposed meets the time restrictions under Zoning Ordinance Section 34-3.26.14.D, then under 34-3.26.14 a permission from the ZBA is not required, under 34-7.14.6.E. Further, that same section (34-7.14.6.E) does not provide for permissions for accessory temporary outdoor sales.

Therefore, if it appears to the Board tonight that the proponent is asking for a deviation from the time restriction set forth in the Zoning Ordinance, then what the proponent needs is a variance and not a permission from the Zoning Ordinance for the time restrictions set forth in Zoning Ordinance Section 34-3.26.14.D. and would need to meet the standards for the granting a variance. A variance will require 4 affirmative votes.

In response to a question from Member Barnette, City Attorney Morita said the Board was only allowed to grant a temporary sale within a 12-month period. If the Board did decide to grant a variance, the variance would be from the 28 total day limit and the 14-day limit on consecutive sales.

Utilizing a PowerPoint presentation, Zoning Supervisor Randt gave the background for this request. He described the location of the site at the northeast corner of 14 Mile and Middlebelt Roads, and showed an aerial of the site as well as a schematic of the property showing the location of the proposed tent and sales area.

Joseph Montgomery, General Manager, Johnny Pomodoro's, 32906 Middlebelt, was present on behalf of this application for outdoor sales. Steve Sonenberg was also present. Mr. Sonenberg said he was representing his brother, Dan Sonenberg, who was unable to be at tonight's meeting.

Mr. Montgomery said the purpose of the request was to allow Johnny Pomodoro's to sell flowers, vegetables, and plants outside during the times and dates stated in the request. Sales would be from May 1 to June 30, with set up starting April 20, and take down complete by July 20. An approximate 60'x40' tent would be used. The sale would be the same as had taken place for the previous 11 years.

Member Seelye asked if there had been any complaints about this outdoor sale in past years. Zoning Supervisor Randt said there had not been any complaints.

Chair Vergun asked about signage. Mr. Montgomery said there would be pricing signs on the plants, and a banner identifying Johnny Pomodoro's floral tent.

Member Rich said that in theory he did not have a problem with what was being proposed. However, he was concerned that the request needed a variance, and therefore must meet the 4 standards for practical difficulty. He thought the request met standards 1, 2, and 4, but he was concerned about the request meeting standard 3: *The petitioner's plight is due to the unique circumstances of the property*, especially because there did not appear to be anything unique about this property that required an outdoor sale.

Mr. Sonenberg relayed comments from his brother, Dan Sonenberg, that the public will benefit substantially from having seasonal outdoor sales with a large inventory that can't be accommodated within the store.

Member Rich agreed with that statement, which applied to the 2nd standard: *That granting the variance requested would do substantial justice to the petitioner* However, it did not apply to the 3rd standard,

and he could not find that the 3rd standard was met. Theoretically, any business could argue the same thing when they wanted extended outdoor sales: that there was not enough room in the store to house whatever they wanted to sell outside. Because this was not a permission, but a variance request, the standards for a variance needed to be met.

In response to questions from Member Barnette, Mr. Montgomery said this would be the 12th year for this sale, and nothing was different than last year.

Member Barnette asked the applicants if they wanted to operate their outdoor sales more than 28 days, and for more than 14 days in a row. Mr. Montgomery said they did want to operate outside those parameters, as they had in past years. The sale would start on May 1 and end on June 30. They did not need until July 20 to take the sale down.

In response to questions from Member Masood, Mr. Montgomery said the building was about 29,600 square feet, and the entire property including the parking lot was about 150,000 square feet.

Chair Vergun opened the public hearing. Seeing that no one came forward to speak, he closed the public hearing and brought the matter back to the Commission.

Member Masood noted that there was an affidavit of mailing, with 16 returns.

MOTION by Masood, support by Barnette, in the matter of ZBA Case 3-20-5666, 32906 Middlebelt, that the petitioner's request for a non-use variance in order to exceed the allowed 14 consecutive days and the allowed total of 28 days for temporary outdoor sales of plants/materials in a B-2, P-1 Zoning District, for a temporary outdoor sale with set up starting April 20, 2020 and take-down/clean-up to finish by July 20, 2020, be **GRANTED** because the petitioner **DID** demonstrate practical difficulties exist in this case in that he **DID** set forth facts which show that:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property.
2. Granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district.
3. The petitioner's plight is due to the unique characteristics and circumstances of the property.
4. The problem is not self-created.

With the following condition:

- Location and size of the tent and sales area be as shown on the application documents, and placement of tent and sales area, as well as hours of operation, must be consistent with any other approvals related to fire lanes, fire safety, and electrical approvals. Signs will be as described this evening by the applicant: product pricing signs and a banner as in past years.

And with the finding that:

- Nothing has changed from previous years.

Member Masood said that the Board of Zoning Appeals had heard and granted this request for the past 11 years, and he believed practical difficulties exist and there are unique circumstances to the property. The

building is roughly 30,000 square feet with the parking lot at least five times that, and it would be in the public's best interest to use the parking lot for summer sales of fruits, vegetables and flowers.

Member Rich said he would not support the motion because in prior years a permission standard, and not the required variance standard, had been used, and therefore the issue of unique circumstances of the property had not previously been considered. Member Rich did not feel the standard of unique circumstances of the property was met.

Chair Vergun called the vote.

Barnette:	Aye
Masood	Aye
Rich	Nay
Seelye	Aye
Vergun	Aye

Motion to GRANT carried 4-1. (Rich opposed)

PUBLIC QUESTIONS AND COMMENTS: None.

APPROVAL OF MINUTES: January 14, 2020

MOTION by Masood, support by Barnette, to approve the Zoning Board of Appeals minutes of January 14, 2020 as presented.

Motion carried 5-0.

ADJOURNMENT

MOTION by Seelye, support by Barnette , to adjourn the meeting at 8:00 p.m.

Motion carried unanimously.

Respectfully submitted,
Azam Masood, Secretary

/cem