

**MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
CITY HALL – COUNCIL CHAMBER  
JANUARY 14, 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, Irvin (alternate), Lindquist, Masood, O’Connell (alternate), Rich, Vergun**

Members Absent:       **King, Seelye**

Others Present:       **City Attorney Morita, Zoning Representative Grenanco, Recording Secretary McGuire**

**SITE VISIT January 12, 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 Rich, support by Lindquist, to amend and approve the agenda as follows:**

- Delete OLD BUSINESS Item A. Case 9-19-5659, withdrawn by the applicant
- Delete NEW BUSINESS Item B. Case 1-20-5665, withdrawn by the applicant
- Add NEW BUSINESS Item B.: Amendment to the Zoning Board of Appeals By-Laws

**MOTION CARRIED 7-0.**

**OLD BUSINESS:**

A. ZBA CASE:                   9-19-5659  
LOCATION:                        Southwest corner of Twelve Mile Road and Drake Road  
PARCEL I.D.:                   23-17-201-004  
REQUEST:                        In an OS-4 Zoning District, the following variance is requested in order to build a 47 foot tall office building:  
                                          1.) A 7 foot variance to the 40 foot maximum permitted height.  
CODE SECTION:                34-3.1.22.E.  
APPLICANT:                    John Valentine as agent for Owner, 32000 W. 12 Mile Rd., L.L.C. (formerly L. C. Trademarks, Inc.)  
OWNER:                         32000 W. 12 Mile Rd., L.L.C. (formerly L. C. Trademarks, Inc.)

As noted above, this case was withdrawn by the applicant.

**NEW BUSINESS**

A. ZBA CASE: 1-20-5664  
LOCATION: 22415 Haynes  
PARCEL I.D.: 23-26-378-014  
REQUEST: In an RA-4 Zoning District, in order to keep a 16 foot tall garage, the following variance is requested: A two foot variance to the maximum permitted height of 14 feet for detached accessory buildings.  
CODE SECTION: 34-5.1.2.C.  
APPLICANT: David Beaudoin  
OWNER: David Beaudoin and Rebecca Beaudoin

Utilizing a PowerPoint presentation, Zoning Representative Grenanco gave the location and background information for this request for a two-foot variance to the maximum permitted height of 14 feet for detached accessory buildings. The garage was built two feet higher than the submitted and approved plans.

David Beaudoin, 22415 Haynes, was present on behalf of this request. John Newsted, 21157 Negaunee Street, Southfield, carpenter on this project, was also present.

Mr. Beaudoin said he had the prints done and the trusses ordered through his employer. Everyone was aware of the 14-foot height restriction and the trusses were ordered for a 6'9" ceiling height. When the trusses came they were a foot higher – 7'9". Also, when the studs were cut, they were not cut short enough. The applicant had not checked the height because he assumed that everything was correct.

Mr. Newsted affirmed that they had measured the walls, but when the trusses came they never checked the height. Until the City inspector came, they did not know the structure was as high as it was. The garage was already built by the time they found out it was too high.

Chair Vergun noted that there was no audience tonight, and therefore no one was present to speak during a public hearing. He asked the Board for discussion.

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

- The garage had been constructed by the applicant and not a contractor.
- They had not estimated the cost to adjust the size of the garage to make it conforming.
- The trusses could not be cut without an engineer's help.
- Modifying the roof might result in a completely flat roof.
- There was not enough additional material needed for the walls as a result of the error to trigger an understanding that the trusses were too high.
- The applicant did not have paperwork that showed the trusses were ordered at 6'9".
- The applicant had not contacted the truss company regarding this error.
- The applicant's neighbors loved what they had done to the property. When the applicant purchased the property, the house was dilapidated and was the subject of several police visits.
- The house was 659 square feet.

Zoning Representative Grenanco explained how height was calculated per ordinance. City Attorney Morita said that the plans in the Board packets were only preliminary. The applicants had never submitted final or "as-built" plans. The preliminary plan had been approved by the Planning Department, but the garage was not built according to plan.

Member Masood said that in order to grant a variance, 4 conditions had to be met, including that the problem was not self-created. He was struggling to understand how that was the case in this instance.

Member Rich pointed out that the square footage of the accessory structure could not be larger than 50% of the square footage of the primary structure or 750 square feet, whichever was greater. If the height as built was allowed to remain, the 2<sup>nd</sup> floor of the garage could be converted into living space, resulting in the garage being 1400 square feet overall. The pictures already showed a refrigerator and other furniture there, and the plans showed the 2<sup>nd</sup> floor as “living space.”

Zoning Representative Grenanco said that when the drawings were originally submitted, the upper level was shorter and labeled as storage space. As built, the upper level was now taller, and it would be up to the ZBA to decide if that space should be considered as livable space, which would be a nonconforming situation, or if there could be a condition to an approving motion that the upper level was not and could not be used as livable space. The applicant had indicated to staff that the space would only be used for storage.

City Attorney Morita added that Staff had determined the 2<sup>nd</sup> level was currently not livable space. As long as it was not livable space, no variance for accessory building area was necessary.

In response to a question from Member Rich, Mr. Beaudoin said he thought the height to the peak of the building was 18’9”; however he did not have the plans with him. Member O’Connell noted the submitted plans showed the height at the peak to be 21’8”. Now that the building was 2 feet higher, the peak was probably at least 2 feet higher as well.

In response to further questions from Member Rich, Mr. Beaudoin reviewed the inspection process thus far. He had received information that the structure was too tall in November 2018.

Member Rich pointed out that the applicant knew the height was an issue since November 2018, yet continued to work on the structure. The electrical inspection was in October 2018, and the rough framing inspection was done November 9, 2018, and that inspection indicated there were uncorrected violations including “pending planning building too tall.” There was another electrical inspection in January 2019. Now, 13-14 months after the applicant had been notified the building was too tall, the applicants were before the ZBA asking for approval of the construction.

Mr. Beaudoin explained that he had discovered the building was too tall after it was constructed, when he already had the roof and siding on. There was not much he could do about the situation until he came before the ZBA, requesting this variance.

Member Rich asked about City process during the 13 months since the identification of a height problem. Zoning Representative Grenanco explained that building inspectors did not check on open permits unless a call was made to request inspection, or until the permit expired, when a letter was generated requesting a final inspection. That was what had happened in this case.

Member Rich pointed out that the permit expired in May 2019, and revised plans were submitted October 19, 2019.

In response to questions from Member O’Connell, Mr. Beaudoin said the roof and siding were on when they were notified in November 2018 that the building was too tall. No stop work order was issued.

Mr. Beaudoin further explained that he could not call for a rough framing inspection until the electrical work was approved.

Member Lindquist asked if the applicant had noticed the additional amount of siding material needed because the building was too tall. Also, the roof angles were different than in the submitted plan, and the ceiling height would have been noticeably different than the original plan. Were none of these things noticed?

Mr. Newsted said the additional material was easy to miss because the extra material was in the truss part itself; they would have purchased the same amount of material regardless. The stairs did not change. They did not notice the additional ceiling height.

Chair Vergun asked if there was an affidavit of mailing. Member Masood said there was an affidavit, with one return.

Chair Vergun asked for further discussion and/or a motion.

While he acknowledged that considerable time and funding had been associated with this construction project, because of the discussion and facts as laid out this evening, Member Masood said he would offer the following motion.

**MOTION by Masood, support by Irvin**, in the matter of ZBA Case 1-20-5664, 22415 Haynes, to **DENY** the petitioner's request for a two foot variance to the maximum permitted height of 14 feet for detached accessory buildings in an RA-4 Zoning District, because the petitioner **DID NOT** demonstrate practical difficulties exist in this case in that he **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.
2. Granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. The petitioner's plight is due to the unique characteristics and circumstances of the property.
4. The problem is not self-created. In fact, the problem is entirely self-created.

Member Masood said a 24" higher building was a very large "miss," and he found that there were adequate opportunities to address this situation that would have been known by the applicant.

Member Rich said he was a little torn on this issue because the structure, while not quite in character with the neighborhood, was attractive. There were significant costs in building the structure, and significant costs would be incurred if it needed to be modified. That being the case, during various portions of the construction phase there were notices that were given. There were also things that an experienced carpenter would know. The rule was to "measure twice, cut once," but in this case the measurement wasn't done, at least by the people who built the trusses and the applicant relied on them - that was something that might need to be resolved with that company. However, for the reasons stated by Member

Masood and elsewhere in tonight's discussion, Member Rich did not feel he had any choice but to support the motion, given that the conditions for practical difficulty had not been met.

Member O'Connell asked if there were any other accessory buildings in the neighborhood that exceeded the 14 feet maximum height. Building Representative Grenanco said she did not do that research.

Member O'Connell asked what the structure would look like, if it had to be reduced by two feet. Chair Vergun said that as discussed earlier, the roof line might become flatter.

Mr. Newsted was concerned with maintaining the integrity of the trusses.

Chair Vergun asked for a roll call vote.

Barnette:	Nay
Irvin	Aye
Lindquist	Aye
Masood	Aye
O'Connell	Nay
Rich	Aye
Vergun	Aye

**Motion to DENY carried 5-2.**

- B. ZBA CASE: 1-20-5665  
LOCATION: 35315 Fendt  
PARCEL I.D.: 23-33-376-002  
REQUEST: In an RA-3 Zoning District, the following variances are requested:
1. A 168 square foot variance in order to keep an existing breezeway.
  2. A 192 square foot variance in order to construct a 12' x 16' shed thus allowing for a total 360 square foot variance to the maximum 750 square foot accessory building allowance.

As noted above, this case was withdrawn by the applicant, and **new Agenda Item NEW BUSINESS B** was added:

**B. AMENDED ZONING BOARD OF APPEALS BY-LAWS  
DISCUSSION AND ACTION**

City Attorney Morita said the purpose of the proposed changes was to ensure that appeals to the Board of Zoning Appeals were filed by an applicant within 30 days after the date an administrative official or body issued its administrative order, requirement, decision, interpretation, or determination in writing, appropriately signed, rendering the order, requirement, decision or determination being appealed. If the order was issued by an administrative body such as the Planning Commission, the appeal must be filed within 21 days after that body approves the minutes of its decision. If the application is rejected by the Zoning Department due to lack of completeness, an extension may be granted not to exceed up to 5 business days; there shall be only one such extension.

The draft changes created new ARTICLE VI, with the renumbering of articles after that. The time limits were consistent with those contained in the Michigan Zoning Enabling Act.

City Attorney Morita offered one change to the draft language: On page 9, delete last line in the title of ARTICLE VI: ~~OF MATTERS OTHER THAN USE VARIANCES~~, as the same time period should apply for a determination/decision regarding use variances.

Once By-Law changes were approved by the ZBA, they were forwarded to City Council, who also had to approve the changes.

The Board discussed whether a 30-day time limit allowed enough time for an applicant to gather information. City Attorney Morita said the 30 day time limit applied just to the application itself, which required minimal submittal materials. In between the application and the actual hearing, there would be more time for the applicant to gather further information to bolster their case. Also, the applicant could ask for an adjournment, which request would be handled on a case by case basis.

It came out in discussion that City staff would need to make sure their enforcement followed correct process in order to ensure timely information was given to applicants regarding the 30-day or 21-day appeal deadline.

The changes would address the issues created when people continued to work on noncompliant structures/projects, after they had been notified they were not in compliance with the ordinance.

**MOTION by Masood, support by Barnette**, that the Zoning Board of Appeals approve the amended Zoning Board of Appeals By-Laws as presented, with the following change:

- Page 9, delete last line in the title of ARTICLE VI: ~~OF MATTERS OTHER THAN USE VARIANCES~~

**MOTION CARRIED 7-0.**

**PUBLIC QUESTIONS AND COMMENTS:** None.

**APPROVAL OF MINUTES:** November 12, 2019

**MOTION by Barnette, support by Irvin**, to approve the Zoning Board of Appeals minutes of November 12, 2019 as presented.

**Motion carried 7-0.**

**ADJOURNMENT**

**MOTION by Rich, support by Barnette, to adjourn the meeting at 8:35 p.m.**

**Motion carried unanimously.**

Respectfully submitted,  
Adam Masood, Secretary

/cem