

**MINUTES  
CITY OF FARMINGTON HILLS  
ZONING BOARD OF APPEALS  
CITY HALL – COUNCIL CHAMBER  
MARCH 11, 2014**

**CALL MEETING TO ORDER:**

Chair White called the meeting to order at 7:35 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: Barringer, Lindquist, Rich, Seelye, Stevens, Vergun, White

Members Absent: Alternate Paramesh

Others Present: Attorney Morita, Zoning Division Supervisor Randt, Alternate Masood

**SITE VISIT MARCH 9, 2014**

Chair White noted when the Zoning Board of Appeals members visited the sites.

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

**APPROVAL OF AGENDA**

There were no changes to the agenda.

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

MOTION CARRIED UNANIMOUSLY, 7-0

**NEW BUSINESS:**

- A. **ZBA CASE: 3-14-5509**  
**LOCATION: 38200 W. Ten Mile**  
**PARCEL I.D.: 23-19-453-006      ZONE: B-3**  
**REQUEST: In order to construct a combined drive-thru restaurant and office in a B-3 Zoning District, the following variances are requested. 1. A 34 foot variance to the required 60 foot building front-yard setback. 2. A 15 parking space variance to the required 60 off-street parking space requirement for the combined drive-thru restaurant and office.**  
**CODE SECTION: 34-4.35, 34.5.2.13. C.xviii, 34-5.2.13.D.ii**  
**APPLICANT: Mark Kellenberger for Tim Hortons**  
**OWNER: Shirley L. Collins Trust**

Zoning Supervisor Randt discussed the location of the property and presented an overview of the property, photos of the business, and a sketch of the proposed parking lot.

Mark Kellenberger, applicant, stated that Tim Hortons is looking to move their regional office to Farmington Hills from Brighton. He noted that they are under contract to purchase the entire property, which was previously a bank, and reuse/reoccupy the existing building for a Tim Hortons restaurant and regional office.

Mr. Kellenberger commented that the variances are critical to the project moving forward. He presented a site plan showing the location of the restaurant and office within the existing building and stated that the front area where the restaurant will be located does not meet setback requirements. He noted in regard to the parking variance, that the office is home to 20 employees who are widely disbursed throughout Michigan and their presence is minimal in the office. He also noted that only four or five employees would spend considerable time in the office, collectively.

Mr. Kellenberger explained that the majority of their business is drive-thru and primarily in the early morning, so as the office hours are beginning, the restaurant business is slowing down; therefore, more parking will be available for guests in the morning prior to office hours and then also later in the day.

Attorney Morita stated that if the Board was going to consider the site plans Mr. Kellenberger is presenting into their deliberation, they need to be made part of the record. Mr. Kellenberger agreed to leave the plans with the Board.

Mr. Kellenberger stated that the 2<sup>nd</sup> floor is comprised of three suites and currently the building has no tenants. He noted that the site meets parking requirements for the restaurant and 1<sup>st</sup> floor regional office space, however, they hope to have tenants on the 2<sup>nd</sup> floor in the future and that is why they are asking for the variance now.

Attorney Morita commented that there was confusion among the Board as to how much of a variance for the parking spaces is required, and she clarified that it is 15 parking spaces.

Member Lindquist inquired about the location being a regional office and the geographical area it covered. Mr. Kellenberger explained that this location would cover the entire state of Michigan and northern Ohio.

Member Lindquist asked about the volume of business they anticipate for this location. Mr. Kellenberger stated he believes it will be a good location and if nothing else, a flagship for Tim Hortons to be able to provide a regional office with a restaurant.

Member Lindquist asked if this would be a corporate location or a franchise. Mr. Kellenberger stated that it is a franchise and a franchisee would not be selected until they receive final approval for the location.

Member Stevens inquired if the ordinance requirement of 32 parking spaces for the square footage of the drive thru restaurant is excessive based upon Mr. Kellenberger's experience. Mr. Kellenberger responded that in his experience and after analysis of other locations, the ordinance requirement for parking does require more than is necessary for a Tim Hortons restaurant. He noted that management would not allow for a location to move forward if they thought there would be a problem with the site.

Member Rich asked what the seating capacity would be inside the restaurant. Mr. Kellenberger explained that this is a debate between himself and the architects. The preliminary floor plan presented shows 46 seats however, typical restaurants have 26-36 seats and less than 10 percent are usually occupied. He believes that some of the seating will be removed to allow for a more open counter space area.

Member Rich questioned where the doors to the restaurant would be located in relation to the parking lot. Mr. Kellenberger indicated that the existing main entrance will be utilized and would enter into the office building and provide an internal access into the restaurant. He noted that a direct access door into the restaurant will be provided.

Member Rich asked if the parking would be on the eastern elevation of the building. Mr. Kellenberger confirmed that the majority of the parking would be on the eastern elevation with direct access to the restaurant and some parking on the west side which will most likely be for employees.

Member Rich inquired about traffic flow through the parking lot. Mr. Kellenberger indicated on the plans that the first drive off Ten Mile is a one-way entrance into the parking lot; the second drive off Ten Mile is exit only for the drive-thru; and the drive off Grand River is a two-way, in which vehicles can either exit or enter and turn left to circle around for the drive-thru or for parking.

Member Stevens commented that he had concerns with the traffic coming in off Grand River and turning right, stating that they would have to exit onto Ten Mile to get back into the parking lot, and typically the reason for a setback of 60 feet is to allow for pavement in front of the store so vehicles can loop around instead of going out onto the road.

Mr. Kellenberger explained that during site design they looked at different options for the drive thru area and driven by comments from the Planning Consultant having separation makes more sense. He noted that there will be directional signage to direct vehicles into the parking area from Grand River.

Chair White inquired about the number of vehicles in the morning and the drive thru backing up, if there has been any time studies done. Mr. Kellenberger confirmed there have been studies and that the typical average wait time, after ordering and proceeding to the pick up window, is no more than 25 seconds. He noted that times do vary depending on orders, but the goal is 25 seconds with 30 seconds as the parameter and most Tim Hortons restaurants achieve that goal.

Member Lindquist asked where the ordering station is located on the site plan. Mr. Kellenberger pointed out the location on the site plan being key #6, on the north side of the building.

Mr. Kellenberger noted that there is room for 5 vehicles between the pickup window and ordering station and room for another 13-15 vehicles before approaching the Ten Mile entrance.

Chair White opened the public portion of the meeting. There being no public comments, Chair White closed the public portion of the meeting.

Secretary Vergun confirmed there was an affidavit of mailing on file with seven returned envelopes.

Mr. Lindquist indicated he was concerned about the permanence of attaching a variance to a property that does not have final Planning approval and that if the proponent or seller could possibly change the terms based on this is now a property with variances.

Attorney Morita explained that the variance can be conditioned on the continuation of the site plan as presented.

**MOTION** by Rich, support by Seelye, in the matter of ZBA Case 3-14-5509, that the petitioner's request to construct a combined drive-thru restaurant and office in a B-3 Zoning District, the following variances are requested: 1) A 34 foot variance to the required 60 foot building front-

yard setback; and 2) A 15 parking space variance to the required 60 off-street parking space requirement for the combined drive-thru restaurant and office, is GRANTED as the petitioner did demonstrate practical difficulties exist based on the following:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose, that being a combined drive-thru restaurant and office, and would render conformity with the ordinance unnecessarily burdensome as the property is allowed to be used as general business use and is consistent with restaurant use.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district, as the use is consistent with the surrounding properties.
3. That the petitioner's plight is due to the unique circumstances of the property as the building already exists and the property is triangular shaped creating limitations in regards to setbacks.
4. That problem is not self-created as the building already exists and is consistent with the use as the proponent has requested in its present form.

SUBJECT to the following conditions: 1) that the construction and site plan is maintained as presented; and 2) that approval is granted by all appropriate City Departments.

MOTION CARRIED UNANIMOUSLY, 7-0

- B. ZBA CASE: 3-14-5510**  
**LOCATION: 22540 Fairmont Park**  
**PARCEL I.D.: 23-28-351-007      ZONE: RC-1**  
**REQUEST: Permission to locate an entranceway sign in a private road right-of-way. The replacement structure meets setbacks, height and square foot regulations.**  
**CODE SECTION: 34-5.5.3.E.ii**  
**APPLICANT: David Lagman, Owner's Representative for Fairmont Park Apartments, L.L.C.**  
**OWNER: Fairmont Park Apartments/Limited Partners**

Zoning Supervisor Randt discussed the location of the property and presented photos of the apartment complex, existing sign, and sketches of the proposed replacement sign.

Attorney Morita explained that this is not a request for a special exception and that the ordinance requires the applicant receive the property owner's approval and the Zoning Board of Appeals permission to locate a sign in a private road right-of-way.

Dave Lagman, applicant, explained that they are removing and replacing an entranceway sign and the replacement sign will be in the exact same location as the previous sign. He noted that the replacement sign has almost the same footprint as the previous sign and he believes the new sign is within character of the surrounding area and neighborhoods.

Chair White inquired about the lighting of the sign. Mr. Lagman stated that it was the same as the existing lighting, which is a white ground light to illuminate the sign not more than 150 watts.

Chair White asked how long the existing landmark sign has been in place. Mr. Lagman responded that he did not know for sure, that the sign has been there longer than his existence with the company but he presumes it is original to the property, approximately 30 years.

Chair White opened the public portion of the meeting. There being no public comments, Chair White closed the public portion of the meeting.

Secretary Vergun confirmed there was an affidavit of mailing on file with no returned envelopes.

**MOTION** by Stevens, support by Lindquist, in the matter of ZBA Case 3-14-5510, that the petitioner's request for permission to allow for the replacement of an entranceway sign in a private road right-of-way, in which the replacement structure meets setbacks, height and square foot regulations, is **GRANTED** as the proponent has met the requirements necessary for permission in this case as set forth in Section 34-5.5.3.E.ii of the Farmington Hills Zoning Ordinance.

**SUBJECT** to the following requirements: 1) that the sign be consistent with renderings, materials and location as presented; and 2) that only the existing lighting will be used.

**MOTION CARRIED UNANIMOUSLY, 7-0**

**C. ZBA CASE: 3-14-5511**  
**LOCATION: 25675 Middlebelt**  
**PARCEL I.D.: 23-23-226-012 ZONE: RA-1**  
**REQUEST: A variance to park or store two commercial vehicles (one pickup with a dump box, one pickup with a snow blade) at a single family home which exceed minimum requirements in a single family zoning district.**  
**CODE SECTION: 34-4.14.1., 2., 4.**  
**APPLICANT/OWNER: Aaron Eaton**

Zoning Supervisor Randt stated that this case came to the Zoning Department as a complaint from a neighboring property owner. He discussed the case, the location of the property, and presented an overview of the property along with photos of the pickup trucks.

Attorney Morita stated that there was permission for a home occupation that existed for this property and when it was originally granted in 1998, the permission also included the parking of one stake truck provided that the stakes be removed when the truck is parked on the property. She noted that the last renewal was in 2002 for one year; therefore, the permission has expired.

Aaron Eaton, applicant, explained that he is not requesting to store two commercial vehicles or any vehicles on his property, he is requesting to drive one truck home at a time. He stated that one truck is a normal pick up truck but has a snow plow attachment and when it is not snowing the snow plow is taken off and stored at his shop. He noted that in a case like today, where it is going to snow 10 inches, he put the plows on before he left his shop at 4:30 p.m. and drove home.

Mr. Eaton stated that he lives across from Kroger and the driveway closest to his house is the main entrance for the truck dock so there are trucks in and out all day and night. He stated that next to his house is the Rainbow Rehabilitation Center and they have trucks coming in and out as well as a dumpster being emptied early in the morning, so the residential character of his area is nonexistent.

Mr. Eaton feels what he does in no way impacts the character of the area or impacts any of his neighbors from enjoying their property. He noted that the neighbors can not see his truck from any of their homes; the arborvitae shields it from view.

Member Lindquist questioned if there would only be the red Chevy truck with the dump box or the Silverado truck with a snow plow and a pull plow there at any given time. Mr. Eaton responded that in the summer time the snow plow truck would never have plows on it and in the winter time the dump truck is in storage. He stated that in the summer the dump box truck could be at his house as well as the pickup truck but without the plows.

Member Lindquist asked if either of the trucks could fit into the garage. Mr. Eaton stated they would not fit as he has an antique car and motorcycle stored there.

Member Lindquist asked if the pickup truck was a commercial vehicle. Mr. Eaton stated that it was registered in his personal name, not registered as a commercial vehicle and does not have commercial markings.

Member Lindquist noted that the truck with dump box had commercial markings on it.

Mr. Eaton added that there was a concern about noise and he does not understand why because his truck makes the same noise as a car.

Member Lindquist noted that noise is only one of the considerations and it is more of an issue with visibility and the residential character of the neighborhood. He stated that this is a residence and not a place of business and uniformly, in occupied residential homes, they do not allow commercial vehicles to be stored there and parking is considered to be storage.

Member Vergun questioned why Mr. Eaton has not been before the Board since 2002 and what the motivation was then as compared to today. Mr. Eaton responded he has not had a complaint regarding his truck in eleven years and in 1998 he had a complaint about his dog which brought the Zoning Inspector out to his property and at that time he received a ticket for his truck being parked at his home and that is what brought him to the Board in 1998.

Member Lindquist asked that when the home occupation permission expired, why Mr. Eaton did not seek to renew. Mr. Eaton explained that when he received the special permission, one of the conditions was to plant shrubs along his south property line, which he did, but he still received complaints about his dog. He stated the other condition was to fence in his yard. He asked Pendleton Club to fence their side since they came in 10 years after he owned his home, they would not; therefore he did not install the fence. He noted the dog since has passed and he does not plan on getting another dog so he did not pursue renewal.

Member Lindquist clarified, in the past, Mr. Eaton did not ask for a variance, he asked for special permission for a home occupation. He stated that in the material provided to the Board he did not recall anything concerning the dog or noise, only information concerning the stake truck.

Member Lindquist stated that the permission was to run a business out of a residential property and asked Mr. Eaton if he still ran a business out of his home. Mr. Eaton responded that the request was to have a variance in order to drive his truck home and park it, not to run a business out of his house.

Chair White inquired if Mr. Eaton's company was a DBA and what address was used to file the DBA records with the County. Mr. Eaton stated that he has a DBA filed with Wayne County and the address on record is 210 West Ann Arbor Road, which is his shop address.

Member Stevens questioned the hardship of driving to the business to pick up the commercial vehicle for work. Mr. Eaton responded that during snow events, if he can come home from work prepared it is helpful since most of his clients are within a mile of his home. He stated that in regard to the truck with the dump box, his landscape supply is at Eight Mile and Lasher and everything he does, as part of his business, is at this part of town.

Mr. Eaton commented that his request is more for the pickup truck with snow plows in that he would like to be prepared for snow events and not have to drive to his shop to come all the way back to take care of his clients.

Chair White opened the public portion of the meeting.

Gary Colbert, 29245 Pendleton Club Drive, stated that he is President of the Pendleton Club Condominium Association and the Association and he personally, are against the variance. He explained that they find the Mr. Eaton's truck parked on Pendleton a lot and he has received complaints over the last two years regarding the truck and sometimes it is more than one truck. He stated that this is concerning because Pendleton is a private road in which the Association maintains and the trucks cause more stress on the road. He also noted that the truck was unsightly to be parked on the road and in the yard.

Jennifer Eaton, 25603 Middlebelt Road, stated that she lives on the other side of Pendleton Drive, south of applicants home, and she is for the variance. She stated that she has lived there since 2006 and did not know he had a truck parked there until she walked the path to the park and that is the only time she can see it, the plantings shield it from sight. She also noted that she does not hear noise from the truck and does not see the truck as a problem.

David Eaton, 25603 Middlebelt Road, stated that he lives with Jennifer Eaton and has lived there since 2005 and has seen other trucks parked on Pendleton Drive but not the applicant's truck. He stated that he only sees the dump box truck in the morning or evening and the pickup with plows is usually parked up against the house and is unnoticeable, even driving by he can not see them. He added that there is no noise issue with the truck as they live on a main road with a speed limit of 45mph and have a Kroger across the street.

Member Lindquist asked if there was egress to Pendleton Club Drive from either property. Mr. David Eaton stated that there is not, however, he does see a lot of trucks in and out of Pendleton and trucks also seem to use it as a turn around.

Chair White asked if Mr. Eaton would like to rebut comments that were presented.

Mr. Eaton stated that he has never driven or parked his trucks on Pendleton and he uses his own circle drive to turn around so there is no reason for him to use it. He added that he has a good report with the neighbors and he feels Mr. Colbert has mistaken his truck for someone else's being parked on Pendleton.

There being no further comments, Chair White closed the public portion of the meeting.

Secretary Vergun confirmed there was an affidavit of mailing on file with three returned envelopes.

Secretary Vergun stated that there were two letters received opposing the variance, one from Donald Bamford, 29711 Pendleton Club Drive and the other from Larry and Joan Repanske, 29625 Pendleton Club Drive.

Attorney Morita commented that the Board may want to ask the proponent for a description of the two vehicles so they may include that in the conditions of the variance.

Chair White asked Mr. Eaton for an overview of each vehicle. Mr. Eaton responded with the following descriptions: 1) Pickup truck is a 2011 Chevrolet Silverado 2500, under 10,000lbs, steel green (grey) in color; and 2) Truck with Dump Box is a 1997 Chevrolet Silverado with a gross vehicle weight of 12,500 (maximum load), red in color. Both vehicles are gas powered with a stock exhaust system. He stated that he will provide tag information and VIN's if necessary.

Member Rich commented that the truck with dump box looks more a commercial vehicle and the pick up truck with plows looks more like a personal vehicle, other than when the plows are on. He stated that the proponent does not drive the dump box truck in the winter so both vehicles should never be on property at same time. He noted that he does not feel there is the same sense of urgency in using the truck with the dump box as the truck with the snow plows.

**MOTION** by Rich, support by Barringer, in the matter of ZBA Case 3-14-5511, that the petitioner's request for a variance to park one Chevrolet Silverado pickup with a snow blade at a single family home which exceeds minimum requirements in a single family zoning district, is **GRANTED** as the petitioner did demonstrate difficulties exist in this case in that he set forth facts which show the following:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property to park a pickup with a snow blade and would render conformity with the ordinance unnecessarily burdensome, as the vehicle, without plows, appears to be a personal use vehicle and has no commercial markings.
2. That 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 as there were no reasonable alternatives.
3. That the petitioner's plight is due to unique circumstances of the property, as it is located on a main commercial road, has a number of commercial properties nearby and has a circular drive.
4. The problem is not self-created.

**SUBJECT** to the following conditions: 1) the vehicle, when plows are attached, must be parked in the center of the circular drive shielded from Middlebelt Road by the trees that exist between Middlebelt Road and the circular drive; 2) the snow plows are only allowed to be attached to the vehicle when the National Weather Service forecasts 2 or more inches of snowfall within the subsequent 24hours particular to Farmington Hills; 3) the records of forecasting be maintained by the property owner; and 3) the same make, model, and weight of the vehicle be as presented in the application and the plows be no larger in size than as indicated.

**FURTHER**, DENY the petitioner's request for a variance to park one pickup with a dump box at a single family home which exceeds minimum requirements in a single family zoning district, as

the petitioner did not demonstrate difficulties exist in this case in that he set forth facts which did not show the following:

1. Compliance with the strict letter of the ordinance would not be unnecessarily burdensome, as this vehicle is only used in the summer and many people drive to their place of business to pick up commercial equipment for business use.
2. That granting the variance requested would do substantial injustice to the neighboring property owners, as this vehicle is clearly a commercial vehicle with markings and not used as a personal vehicle.

MOTION FAILED, 3-4 with Lindquist, Stevens, Vergun and White opposed.

Chair White indicated that the Board will need to make another motion.

**MOTION** by Lindquist, support by Vergun, in the matter of ZBA Case 3-14-5511, that the petitioner's request for a variance to park one Chevrolet Silverado pickup with a snow blade at a single family home which exceeds minimum requirements in a single family zoning district, is **GRANTED** as the petitioner did demonstrate difficulties exist in this case in that he set forth facts which show the following:

1. Compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property to park a pickup with a snow blade and would render conformity with the ordinance unnecessarily burdensome, as the vehicle, without plows, appears to be a personal use vehicle and has no commercial markings.
2. That 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 as there were no reasonable alternatives.
3. That the petitioner's plight is due to unique circumstances of the property, as it is located on a main commercial road, has a number of commercial properties nearby and has a circular drive.
4. The problem is not self-created.

**SUBJECT** to the following conditions: 1) the vehicle, when plows are attached, must be parked in the center of the circular drive shielded from Middlebelt Road by the trees that exist between Middlebelt Road and the circular drive and that the existing evergreen screening be maintained; 2) the truck with snow plows attached be allowed to park on the property from November 1 through March 31; 3) the same make, model, and weight of the vehicle be as presented in the application and the plows be no larger in size than as indicated, with the proponent able to apply to the City and request the same relief for a replacement vehicle of the same class and same size plows; and 4) the vehicle is not to be marked as a commercial or business vehicle.

**FURTHER**, DENY the petitioner's request for a variance to park one pickup with a dump box at a single family home which exceeds minimum requirements in a single family zoning district, as the petitioner did not demonstrate difficulties exist in this case in that he set forth facts which did not show the following:

1. Compliance with the strict letter of the ordinance would not be unnecessarily burdensome, as this vehicle is only used in the summer and many people drive to their place of business to pick up commercial equipment for business use.
2. That granting the variance requested would do substantial injustice to the neighboring property owners, as this vehicle is clearly a commercial vehicle with markings and not used as a personal vehicle.

MOTION CARRIED, 5-2 with Barringer and Rich opposed.

**PUBLIC QUESTIONS AND COMMENTS:**

David Eaton, neighbor of the applicant for Item C, stated that if the applicant parks his vehicle in the circular drive as suggested, it will be seen from the neighborhood, he suggests parking up against the garage.

Gary Colbert, President of the Pendleton Club Condominium Association, stated that the Board does a good job. Mr. Lindquist asked Mr. Colbert to report any improperly parked vehicles on Pendleton Club Drive to the Zoning Department.

**APPROVAL OF JANUARY 14, 2014 MINUTES:**

MOTION by Rich, second by Lindquist, to approve the January 14, 2014 Zoning Board of Appeals minutes, as submitted.

MOTION CARRIED UNANIMOUSLY, 7-0

Chair White recognized Mr. Stevens as a new full member and Mr. Masood, in the audience, as a new alternate member of the Zoning Board of Appeals.

**ADJOURNMENT**

MOTION by Stevens, support by Rich, to adjourn the meeting at 10:26pm.

MOTION CARRIED UNANIMOUSLY, 7-0

Respectfully submitted,

Daniel Vergun, Secretary  
Zoning Board of Appeals

/ceh