

**MINUTES
CITY OF FARMINGTON HILLS
ZONING BOARD OF APPEALS
CITY HALL – COUNCIL CHAMBER
APRIL 8, 2014**

CALL MEETING TO ORDER:

Chair White called the meeting to order at 7:33 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: Lindquist, Paramesh, Rich, Seelye, Stevens, Vergun, and White

Members Absent: Barringer

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

SITE VISIT APRIL 6, 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

Zoning Division Supervisor Randt stated that ZBA Case 4-14-5516 was withdrawn from the agenda.

MOTION by Rich, support by Seelye, to approve the agenda as amended.

MOTION CARRIED UNANIMOUSLY, 7-0

NEW BUSINESS:

- A. **ZBA CASE: 4-14-5512**
LOCATION: 35000 Grand River Avenue
PARCEL I.D.: 23-21-351-020 ZONE: LI-1
REQUEST: Permission for a temporary sales event: (1) which is not accessory to the principal use, (2) not owned or occupied by the holder of the license for the event, (3) ends later than 10:00 p.m. on any day. Includes temporary structures and uses to sell fireworks and other related merchandise for 10 days from June 26, 2014 through July 5, 2014 from 10:00 a.m. to 11:00 p.m. Included in this permission is a 40 ft. x 40 ft. tent and an 8 ft. x 40 ft. metal storage pod.
CODE SECTION: 34-7.14.6, 34-3.26.14, 34-7.14.9
APPLICANT: Richard Tapper for Phantom of Michigan, Inc.
OWNER: Drakeshire Lanes, Inc.

Attorney Morita advised the Board that there is a proposed amendment regarding Temporary Outdoor Sales going before City Council at the end of this month. The proposed ordinance, if adopted by Council, would give applicants of Temporary Outdoor Sales more relief than under the current ordinance. She noted that the proponents in attendance should be aware of this; however, the Board will be proceeding under the existing ordinance this evening. She also stated that the proponents should contact the City Clerk's Office on May 1, 2014 to check the status of the proposed ordinance.

Zoning Supervisor Randt discussed the location of the property and presented an overview and photos of the parking lot, sign, storage pod and tent that will be utilized along with a sketch of the tent layout, and location of where the tent and storage pod will be on the property. He noted that the request is similar to last year.

Richard Tapper, applicant, explained that this is the third season he is requesting a temporary sales event to sell fireworks at this location, the request is for a period of 10 days and will be run by the proprietor of Drakeshire Lanes. He noted that in the past two years there have been no incident reports from Police or Fire and they have been approved by the State Fire Marshall. Mr. Tapper indicated that the tent and storage unit will be in the same location as the last two years and the fireworks for sale are state legalized fireworks. He mentioned that the hours of operation are 10:00 a.m. – 10:00 p.m.

Member Lindquist inquired about the hours of operation, stating that the request is for 10:00 a.m. to 11:00 p.m. Mr. Tapper responded stating that they are asking for sales until 11:00 p.m. only on their two busiest days, that being July 3 and July 4, otherwise when it is not busy, they will start shutting down between 9:00 p.m. and 10:00 p.m.

Chair White asked if there are any changes in the product that maybe controversial from a regulatory standpoint. Mr. Tapper responded that the product is the same as what was carried the last two years and that they are a member of the American Firework Society, AFS; therefore, all products are checked and certified by the committee before entering into the United States.

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

Member Rich inquired about the ordinance for temporary use and if the Board had authority to grant permission beyond 5 days. Attorney Morita responded stating that the Board does not have the authority to grant more than 5 days for a non-accessory use.

Member Lindquist questioned if the proponent were to receive permission from the Board for the 5 days, and the proposed ordinance is adopted by City Council, will he be required to obtain a license from the City Clerk. Attorney Morita stated that if the Board was to grant permission tonight and City Council approves the proposed ordinance, the proponent would be grandfathered in and subject to the terms of the old ordinance; therefore, he would not have to comply with the new ordinance.

Attorney Morita explained that if City Council adopts the proposed ordinance, the Board will not see any more of these types of cases; all would be handled through the Clerk's Office.

Further discussion was held regarding the proposed amendments to the ordinance and the changes that would occur if City Council were to approve.

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

Member Lundquist asked the proponent if he would rather receive permission for the 5 days tonight or wait and adjourn the matter until City Council approves the proposed ordinance. Mr. Tapper stated he would like to proceed with the 5 day permission.

Member Rich asked the proponent which 5 days he would prefer to operate the event. Mr. Tapper stated he would prefer June 30 through July 4.

Attorney Morita advised the proponent that even if he receives a 5 day permission tonight he should go speak to the City Clerk in May to see if he can extend his time period under the new ordinance.

MOTION by Rich, support by Paramesh, in the matter of ZBA Case 4-14-5512, to GRANT the petitioner's request for permission, as modified, to allow for a temporary outdoor sales event; 1) which is not accessory to the principal use; 2) which is not owned or occupied by the holder of the license for the event; and 3) ends later than 10:00 p.m. on any day for the purpose of clean-up, storage of inventory and closing down purposes only. Includes temporary structures and uses to sell fireworks and other related merchandise for a period of 5 DAYS from June 30, 2014 through July 4, 2014 with event sale hours from 10:00 a.m. to 10:00 p.m. and clean-up/closing down operations from 10:00 p.m. to 11:00 p.m.. Included in this permission is a 40 ft. x 40 ft. tent and an 8 ft. x 40 ft. metal storage pod; because the proponent has met the requirements necessary for permission in this case as set forth in Sections 34-7.14.6, 34-3.26.14, 34-7.14.9 of the Farmington Hills Zoning Ordinance.

SUBJECT to the following conditions: 1) the structures, storage unit, and tent be as indicated on the application and placed in the same location as the previous year; 2) the colors, layout and signage be the same as used in prior years; and 3) approval is granted by all appropriate City Departments.

MOTION CARRIED UNANIMOUSLY, 7-0

- B. ZBA CASE: 4-14-5513**
LOCATION: 24233 Orchard Lake/Vacant parcel adjacent
PARCEL I.D.: 23-22-476-043, -044 ZONE: B-3
REQUEST: Permission for temporary uses and structures to sell flowers, mulch and bagged soil May 1, 2014 to July 20, 2014. Temporary structures including but not limited to a greenhouse. Proposed hours: Monday – Saturday 8 a.m. – 8 p.m. and Sunday 9 a.m. – 6 p.m. Set-up starts April 20 and takedown/cleanup to finish July 20.
CODE SECTION: 34-7.14.6
APPLICANT: Raphael Orah
OWNER: Maroraha, L.L.C./24233 Vacant Properties, L.L.C.

Zoning Supervisor Randt discussed the location of the property and presented an overview of the property and a sketch of the layout of the tents and tables.

Raphael Orah, applicant, explained that this is his third time coming before the Board requesting to sell flowers at this location. The first year he received approval for one year, the second year for three years and at that time he was told that next time he would get approval for five years. He stated that he sells flowers and many people like his sale. He introduced his business partner Mr. Scott Saxton and noted that they hire 8-12 Farmington Hills residents as employees for this event.

Member Lindquist inquired if the operation was done by a contractor in previous years. Mr. Orahra stated no, that he and Mr. Saxton have been operating this sale for years.

Chair White mentioned that there was an inquiry regarding sales staff parking on the adjacent medical facility property. Mr. Saxton explained that they did not park there last year and that they have been parking in the empty lot behind the dry cleaners.

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 less than ten returned envelopes.

Attorney Morita stated that currently, as it stands under the ordinance, the applicant can have a Temporary Outdoor Sales event provided that it does not exceed 14 consecutive days and a total of 28 days in a 12 month period; and the event shall begin no earlier than 9:00 a.m. and end no later than 10:00 p.m. She added that the permission is limited to a 12 month period.

There was discussion regarding the current temporary use ordinance, the authority the Board has to grant permissions and the conditions and potential changes to the current ordinance.

Member Lindquist inquired if the proponent would prefer for the matter to be adjourned to the next meeting based on the fact that there may be potential changes to the current ordinance.

The proponent stated that he would prefer not to adjourn this matter to the next meeting as he would be losing sales time.

The owner asked that the City please not make it more difficult for residents to bring more business to the City and to work with businesses to make this process easier.

The owner was encouraged to attend the City Council meeting of April 21, 2014 when they will be discussing potential changes to the current temporary sales and seasonal sales ordinance.

Attorney Morita stated that she misspoke earlier and clarified that the Board, under the current ordinance, could in fact approve the request as submitted.

MOTION by Lindquist, support by Rich, in the matter of ZBA Case 4-14-5513, to GRANT the petitioner's request for permission to allow for temporary uses and structures to sell flowers and mulch and bagged soil from May 1, 2014 to July 20, 2014 with temporary structures including but not limited to a greenhouse, during the hours of Monday – Saturday 8 a.m. – 8 p.m. and Sunday 9 a.m. – 6 p.m. Set-up beginning on April 20 and takedown/cleanup to finish July 20,

SUBJECT to the condition that the layout of the structures for the sale be as presented by the applicant.

MOTION CARRIED UNANIMOUSLY, 7-0

- C. **ZBA CASE: 4-14-5514**
LOCATION: 22540 Vacri
PARCEL I.D.: 23-29-377-015 **ZONE: RA-1**
REQUEST: Permission to have two (2) employees come to the home to work in State Licensed daycare. The ordinance allows no more than one employee at any one time and such employee must be parked in an approved paved or gravel area on the premises. (Number of employees does not include immediate family members of the licensee)
CODE SECTION: 34-4.16.6
APPLICANT: Madan and Mamta Kaura
OWNER: Madan L. Kaura

Zoning Supervisor Randt discussed the location of the property and presented an overview of the property along with photos submitted by neighbors of cars parking in the road.

Attorney Morita commented that this case was advertised as a request for permission; however, it should be a variance request.

Chair White questioned how that will change what is presented and voted on this evening. Attorney Morita responded stating that it is a practical difficulty standard and those guidelines should be followed.

Member Lindquist inquired as to what type of variance this case would be considered. Attorney Morita explained that it is a non-use variance and that the home daycare is a permitted use and this request is for a variance on the number of employees allowed; therefore, the use is not changing so it is not a variance from a permitted use, it is a variance from the number of employees allowed onsite.

Member Seelye questioned if the case should be re-advertised. Attorney Morita stated that the relief requested would be the same regardless of how it was advertised and she thinks there is appropriate notice as to what is being requested.

Madan and Mamta Kaura, applicants, explained that Mrs. Kaura had a stroke two years ago and her physical capabilities are now limited. As part of their care service, they are to provide ethnic fresh vegetarian food for the children, which requires more work. They also have to have general language flexibility and the teacher they have speaks the same language as spoken by the children at home, so the children can easily relate to her.

Member Stevens asked how many children are enrolled at the home daycare. Mr. Kaura stated there are 12 children enrolled but sometimes only 10 or 11 are present.

Chair White inquired about the hours for drop off and pick up. Mrs. Kaura stated that the hours for drop off are between 8:00 a.m. and 9:30 a.m. and pick up is between 4:30 p.m. and 5:30 p.m., Monday through Friday. She noted the hours of operation are 7:30 a.m. to 5:30 p.m. but parents do not start dropping off until 8:00 a.m.

Chair White asked if the pick up time ever went past 5:30 p.m. Mrs. Kaura stated that this does not happen and that she charges if the parents are late; however, this past winter some parents were late due to the bad weather but no later than 5:45 p.m.

Chair White questioned how many times this past winter the pick up time was later due to bad weather. Mrs. Kaura responded stating possibly five times and noted that they have become strict with the parents so that the neighbors do not have any problems.

Member Lindquist asked if the employees each drove a vehicle to work and where they park. Mrs. Kaura stated that one employee drives to work and parks in the driveway and the other gets dropped off and picked up by her husband. She added that she and her husband park their personal vehicles in the garage.

Member Lindquist inquired as to where the drop off and pick up procedures take place. Mrs. Kaura stated that all takes place in the driveway; however, sometimes the parents wait in the road in front of the house if a car is backing out of the driveway.

Member Lindquist asked how many vehicles come to drop off and pick up. Mrs. Kaura stated there were 8 to 10.

Chair White inquired about the employee parking in the street in front of the house. Mrs. Kaura stated that her employee used to park in front of the house from 8:30 a.m. to 5:30 p.m. but now she parks in the driveway. She added that they have had the daycare for 13 years and have not had any incidents.

Member Lindquist commented about the photos that were presented to the Board which showed cars blocking the street during pick up and the employee parking in the street. Mr. Kaura stated that this happened one time in bad weather and he had a serious talk with the parents about keeping order and not having this happen again. Mrs. Kaura noted that the photos were all from the same day and this only happen one time and has since been corrected.

Chair White inquired about the ticket that was cited by the Zoning Division. Mr. Kaura stated it was a citation for the employee parking in the street. He added that she parked in the street while the driveway was being cleared of snow and she forgot to move it back into the driveway.

Secretary Vergun stated that a letter was received from Janice Millinoff, 22541 Vacri, who is against the variance because of there already being significant traffic at the house.

Secretary Vergun confirmed there was an affidavit of mailing on file with one returned envelope.

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

Member Stevens questioned if the requirement for only one employee follows state or local law. Attorney Morita responded stating that a licensed home daycare allowing the homeowner, family members that reside at the home, and one employee to operate the daycare for up to 12 children does comply with the State ordinance; however, it is above and beyond the City's ordinance since the City does not allow outside employees for other permitted home occupations.

Member Lindquist commented that the permitted employee is required to park on the property itself and not in the street and inquired if the Board could grant the variance and not allow the additional employee to park on the premises. Attorney Morita stated that the variance, as advertised, is for an additional employee and does not include that the employee be allowed to park off the property; therefore, if the requested additional employee drives to the property, they will be required to park in the driveway.

Member Lindquist stated that he feels the most important issue in this matter is the parking of the second vehicle in the limited space that is allocated for dropping off and picking up of the children, which is in the driveway. He believes that the neighbors would not have an issue with a second employee being present at the site, but rather have an issue with an additional vehicle making two trips up and down the driveway and through the neighborhood each day to bring in that second employee. He stated that he

would be supportive in granting the variance only if it does not allow for an additional vehicle to be parked either on the premises or in the street.

MOTION by Lindquist, support by Vergun, in the matter of ZBA Case 4-14-5514, to GRANT a non-use variance to allow for a second state licensed home daycare employee to work at the proposed site, 22540 Vacri; as the proponent has met the practical difficulties standard, based on the following:

1. Compliance with the strict letter of the ordinance and restrictions of the area, in this case parking, would unreasonably prevent the petitioner from using the property for a permitted purpose, that being a state licensed home daycare, and would render conformity with the ordinance unnecessarily burdensome as with the number of children is in accordance with state regulations and two employees is not unreasonable for a home daycare when supervised by the owner of the property.
2. That granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the district, with respect to the omission of the ability to bring in a second employee vehicle to the property.
3. That the petitioner's plight is due to the unique circumstances of the property as it is a licensed home daycare and has limited driveway space and limited ability for additional parking.
4. That problem is not self-created as a properly licensed home daycare is a permitted use for the property.

SUBJECT to the following conditions:

- This home remains a state licensed daycare
- The current owners/operators continue to hold the state license
- A second employee vehicle is prohibited to be parked on the property or in the street
- The second employee is to be dropped off and picked up in the same manner as the daycare children, in the driveway of the daycare only
- The driveway is to be kept clear in order to conduct drop offs and pick ups, regardless of weather conditions
- The variance is for a second employee for a state licensed home daycare and not any other employment purpose
- If a complaint is brought to, and verified by the Zoning Division, the proponents will be required to come back before the Board for reconsideration.

Roll Call Vote:

Yeas:	Lindquist, Paramesh, Vergun, and White
Nays:	Rich, Seelye, and Stevens
Absent:	Barringer
Abstentions:	None

MOTION CARRIED, 4-3 with Rich, Seelye, and Stevens opposed.

D. ZBA CASE: 4-14-5515
LOCATION: 22610 Clear Lake
PARCEL I.D.: 23-29-379-012 ZONE: RA-1
REQUEST: A 25 foot variance to the required 35 foot rear yard setback in order to build a 3-4 season room at the back of their home.
CODE SECTION: 34-3.1.4.E
APPLICANT/OWNER: Larry G. Ehlers

Zoning Supervisor Randt discussed the location of the property and presented an overview of the property and a proposed site plan sketch for the addition.

Larry Ehlers, applicant, explained that he wants to build a quality Florida room and the setback requirements do not allow him to without a variance. He stated that there are five other homes in his subdivision that have similar rooms on the back of their home and they do not have the required setback. He questioned if the setback requirement has changed in the recent years.

Chair White confirmed that the setback requirement has changed from 30 feet to 35 feet.

Member Rich asked Zoning Supervisor Randt if the issue was the setback at the rear of the house. Mr. Randt stated that was correct.

Member Rich commented on the easements noted on the sketch at the rear of the house and inquired as to what the easements were for. Mr. Randt responded stating he could not answer that question and the Engineering Division did not have any record of the easements.

Member Rich stated that he has concerns with granting a variance not knowing what the easements are for and noted that it is possible for construction to occur on these easements.

Chair White asked the applicant if he had any knowledge of what the easements were for. Mr. Ehlers stated that he only knew of the underground power lines that run through the backyard.

Attorney Morita expressed that due to the easement issues, she would strongly recommend that the Board consider adjourning this case until there is clarification as to what the easements are for and where exactly they are located so that the Board is not granting a variance for this property owner to build over a easement that, if construction were to occur, the City would then have to pay the homeowner for damages to the sunroom. She noted that the property owner has presented a mortgage survey which is not completely accurate as to the locations of the easements or the exact location of the home as it sits on the property. She feels that more investigation into the easements is necessary at this time. She added that if the applicant chose to adjourn to a later date, there would not be a reapplication fee.

Discussion was held regarding the easements, the possible damage to the property if construction were to occur on the easements, the possible damage to underground utilities that may be present in the easements and the liability if the Board were to grant a variance for construction in or over an easement.

The Board made the following suggestions in order to assist with identifying the reason for and the location of the easements:

- Have the property surveyed by a professional surveyor
- Contact the subdivision's Homeowners Association
- Call Miss Dig to mark the property for utilities
- Contact Oakland County Register of Deeds

- Have an updated title search performed on the property
- Check online with the State of Michigan to obtain a copy of the subdivision plat

Chair White asked the applicant if he would like to adjourn this matter for one month to allow for additional research into the easements. Mr. Ehlers stated that he would like to adjourn and will return before the Board on May 13, 2014.

MOTION by Rich, support by Lindquist, to adjourn the consideration of ZBA Case 4-14-5515 to the Zoning Board of Appeals meeting of May 13, 2014.

MOTION CARRIED UNANIMOUSLY, 7-0

PUBLIC QUESTIONS AND COMMENTS:

There were no public comments

APPROVAL OF MARCH 11, 2014 MINUTES:

MOTION by Rich, second by Seelye, to approve the March 11, 2014, Zoning Board of Appeals minutes as submitted.

MOTION CARRIED UNANIMOUSLY, 7-0

ADJOURNMENT

MOTION by Stevens, support by Seelye, to adjourn the meeting at 10:29 p.m.

MOTION CARRIED UNANIMOUSLY, 7-0

Respectfully submitted,

Daniel Vergun, Secretary
Zoning Board of Appeals

/ceh