

CITY OF FARMINGTON BOARD OF ZONING APPEALS MINUTES
March 3, 2010

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, March 3, 2010, in the Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 267, of 1976, as amended.

Chairperson Buyers called the meeting to order at 7:05 p.m.

ROLL CALL

PRESENT: Bennett, Buck, Buyers, Christiansen, Dompierre, Majoros

ABSENT: Kmetzo

CITY OFFICIALS PRESENT: Director of Public Services Gushman, Building Inspector Koncsol

DEFINE PARTICIPATING MEMBERS

Chairperson Buyers clarified procedure by explaining that Mayor Buck is a new member on the Board of Zoning Appeals. Since he was not seated on the board at the last meeting, when the appeal of Ralph Dallo, Art One Signs, on behalf of Happy's Pizza, was introduced, Mr. Dompierre will continue his tenure on this case and Mayor Buck will participate beginning with the second item on the agenda.

MINUTES OF PREVIOUS MEETING

MOTION by Christiansen, seconded by, Majoros to approve the minutes of the meeting of January 6, 2010, as submitted. Motion carried, all ayes.

MINUTES OF PLANNING COMMISSING MEETINGS OF DECEMBER 14, 2009 AND JANUARY 11, 2010

MOTION by Christiansen, seconded by Bennett, to receive and file the minutes of the Planning Commission meetings of December 14, 2009 and January 11, 2010.

APPEAL OF: Ralph Dallo
 Art One Signs
 11177 E. 8 Mile Rd.
 Warren, MI 48089

On behalf of Happy's Pizza, at 21998 Farmington Road, request for variance to Sec. 35-48(f)(1) to allow the continued use of neon as a window outline on the north and west windows of the business.

Chairperson Buyers presented the appeal of Ralph Dallo, Art One Signs, on behalf of Happy's Pizza, noted this item was before the board in January, and requested Mr. Christiansen, Planning Commission liaison, to present an update on this appeal.

Christiansen stated this case was considered and tabled at the meeting of January 11, 2010, to allow staff to ask a question of City Attorney Schultz regarding applicability of the appeal to the Planning Commission as a site plan/building design question. At the February meeting, the petitioner requested the appeal to be tabled since a full board was not present. For a five member board, an affirmative vote of a majority of the full board, which is three, is required. If only four members are present, an affirmative vote of three is still required. The petitioner is afforded the opportunity to table an appeal until a full board is present. He deferred to Building Inspector Koncsol for any further updates on this appeal.

Building Inspector Koncsol stated City Attorney Schultz has provided an opinion that the reference to "architectural band" in Section 35-48(f)(1) is a matter for the Zoning Board to decide. The reference to architectural band is to a feature of a building as a whole, and that the reference to illumination is to the internal illumination of a banding feature, and not exposed tubing as in the case of Happy's Pizza. It is not a site plan/building design question.

Chairperson Buyers invited the petitioner to address the board.

Mr. Ralph Dallo, Art One Signs, 11177 E. 8 Mile Rd., Warren, MI 48089, representing Happy's Pizza, at 21998 Farmington Road, introduced himself and stated he has no additional comments and referenced his presentation on January 11, 2010.

Christiansen discussed the improvements to the shopping center, expressed appreciation for the upgrades and addition of new tenants, and reviewed the process for signage for a new use. The petitioner made proper sign application, but also put in neon tubing bordering the internal window framing. This is not permitted under Section 35-48 (f)(1) of the City Code for new uses. There are other existing businesses that have neon tubing; however, they are grandfathered in. This is a new use, and the petitioner was told this was not allowed. When the deficiency was identified, a code violation was issued. This ended up in court. The court has deferred further action to allow the request to be presented to the Board of Zoning Appeals. The appeal is for a variance to Sec. 35-48(f)(1) to allow the continued use of neon as a window outline on the north and west windows of the building. The case was tabled in January for staff to address questions to the City Attorney. Attorney Shultz has stated in his view, the Board of Zoning Appeals is the proper authority for deciding the question of whether the tubing should be allowed, and not at the Planning Commission level. The case was tabled again in February at the request of the petitioner. It is now before this board for consideration of a variance.

Christiansen further discussed certain tests, or findings of fact, the Board of Zoning Appeals must consider as criteria to grant a variance, such as practical difficulties, substantial justice, public safety and welfare, not self-created, no safety hazard or nuisance, or relationship to adjacent land uses. The petitioners are responsible for providing a basis for the board to grant a variance. The tubing was ordered turned off for January and February. The petitioner claimed it was part of their business brand or identity, and affected the overall business. Unfortunately, this is not a basis for granting a variance.

Christiansen stated he is struggling with the tests. The issue is not the business, or how they operate. He is happy to have them as part of the community; however he does not think they satisfy the tests for granting a variance, such as practical difficulty, not self-created, or harmonious relationship to adjacent land uses. The issue is they are doing something that the ordinance does not allow.

Chairperson Buyers stated he is also struggling with what this board has to do and the rules they have to operate under. He shares the opinion that the shopping center looks excellent. He appreciates the investment that was made in the community, but we have an ordinance that prohibits something that is currently being done. This board has to operate under limited circumstances for the granting of a variance. It is difficult for him to find that any of the tests for granting a variance fit this case, such as practical difficulty, relationship harmonious with adjacent uses, or not self-created.

Mr. Dallo thanked the board for allowing him to appear at this third meeting addressing his appeal. He stated the business is not allowed to advertise with fliers in the community. They have been stopped from passing out handbills. Advertising is very important to the business. All other 67 Happy's Pizza establishments have neon borders around the windows. Farmington is the only place where this has not been allowed. They need the business. They are struggling. Lots of money has been spent on this business, and sales are down. They need every customer. He requested the board to consider granting the appeal. If he thought the lighting caused accidents, he would eliminate it; however, that is not the case. The neon is the corporate look. He compared this to McDonald's signature golden arches.

Chairperson Buyers thanked Mr. Dallo for his presentation. However, he also has the same reservations as expressed by Mr. Christiansen. The current signage is very visible. He is not sure the neon will add to the draw. The business is close to the road. The argument that the neon is necessary for the corporate logo does not meet the tests for granting a variance.

Bennett stated he could argue with statements made by Mr. Dallo regarding advertising, but that is not an issue for this board. He has not heard anything new that would change his view or allow this board to grant a variance.

MOTION TO DENY APPEAL OF RALPH DALLO, ART ONE SIGNS, ON BEHALF OF HAPPY'S PIZZA

MOTION by Bennett, seconded by Dompierre, that the appeal of Art One Signs, on behalf of Happy's Pizza, 21998 Farmington Road, in relation to Sec. 35-48(f)(1), be denied on the following basis:

1. The petitioner has not established that compliance with the strict letter of the restrictions of the ordinance would unreasonably prevent the use of the property or be unnecessarily burdensome. This refers to the fact that the property is well-lighted and visible.
2. The petitioner has not established that there are unique circumstances with regard to the subject property. This refers to the visible, unobstructed, location of the business.
3. The petitioner has not established that the need for the variance is not self-created. The ordinance was in place when the business applied for the permit and went before the Planning Commission.

Motion carried, all ayes.

Chairperson Buyers stated the appeal is denied.

Discussion followed on distribution of handbills, which is permitted after registration with the City.

Mr. Gushman noted Public Safety encountered some problems with handbill distributors for this business and are trying to work with them.

**APPEAL OF: Daniel and Elizabeth Christmas
32090 Nine Mile Rd.
Farmington, MI 48336**

Request for variance to Sec. 35-38(b)(2) so that a 24' utility trailer can be parked in the west side yard behind the front wall of the home. City Code requires that this type of equipment be parked or stored behind the rear building line.

Mr. Daniel Christmas addressed the board. He stated he and his wife, Elizabeth Christmas, are asking for a variance to park their utility trailer in their driveway, behind the front of the house in the west side yard of their property, because of the practical difficulty of parking in their backyard.

Christiansen noted the case was scheduled to be heard at the February meeting but was postponed, at the petitioner's request, because a full board was not present.

Building Inspector Koncsol stated over the last 10 years he periodically saw this trailer in the driveway. Mr. Christmas informed him that he used the trailer to haul expensive cars all over the country. However, since the economy has taken a downturn, the trailer has been parked in the driveway for extended periods of time. After informing the owners that parking the trailer in the driveway was in violation of the City Code, a court ticket was issued in early December, 2009. On January 7, 2010, magistrate Christoph accepted the owner's plea of responsible with explanation and postponed the hearing for 60 days until an appeal was made to the Zoning Board of Appeals.

Christiansen noted this has been going on for over 10 years. Section 35-38(b)(2) of the ordinance requires that trailers be parked in the rear. They do have unique circumstances. They don't have sufficient access to the rear yard, and there are slope problems in the rear yard. The petitioner has physical conditions creating a practical difficulty. He questioned what parking alternatives may be available.

Mr. Christmas confirmed that the request is to allow parking in the driveway on the west side of the house.

Building Inspector Koncsol stated the garage is recessed. The driveway, technically, becomes the side yard.

Board members reviewed photographs and a legal description of the subject property.

In response to a question by Christiansen, Chairperson Buyers confirmed that public notice was sent to all property owners within 300 feet of the site in question.

Chairperson Buyers reviewed correspondence received by the board expressing approval of the variance:

Ron Schultz, Villa Nova Apartments, 31720 Freedom Rd., Farmington, MI 48336
Dr. & Mrs. Roderick McPhee, 22418 Brookdale St., Farmington, MI 48336

Bennett noted that a portion of the house is in Farmington, and a portion is in Farmington Hills. When the trailer is parked in the driveway, the front is in Farmington Hills, and the back is in Farmington. As it is presently parked, the hitch extends 31" beyond the house. It couldn't be backed up any further without blocking the entrance to the house. It is less obnoxious to the neighbors by being parked in the driveway.

Mr. Christmas stated he would park the trailer in the back of the house, if this were an option.

Bennett stated you couldn't get into the backyard without going on the neighbor's property, and the grade in back is very steep.

Buck asked what is the opinion of Farmington Hills.

Building Inspector Koncsol stated Farmington Hills has a similar ordinance. Mr. and Mrs. Christmas are taxpayers in Farmington.

Director Gushman stated the backyard is a flood plain. They cannot alter the property without going through DEQ, and the DEQ is not usually favorable to alterations of wetlands.

Chairperson Buyers suggested inclusion of a condition that the trailer be parked backed up in the driveway so it is minimally visible to the street.

Bennett asked Mr. Christmas if the trailer is backed up as far as possible while allowing comfortable access to the door; and Mr. Christmas replied, "Yes".

Bennett stated the trailer sticks out about 20 feet. It is an eyesore.

Mr. Christmas stated the pickup truck cannot go in the garage. He lives next to the water treatment plant on a dirt road. It is not a normal Farmington community. He doesn't view it as an eyesore. He tries to keep his equipment looking good.

Majoros asked if the trailer is taken out every day.

Mr. Christmas stated he is out of business right now. He was storing the trailer at Eight Mile and Beech, but he no longer has this option available to him. In the past, he had an open trailer; but it was stolen from in front of his house. He is hoping to get a second open trailer.

Majoros questioned where a second trailer would be parked.

Mr. Christmas stated he would need to find a place to park the trailer before making the purchase.

Discussion followed on parking the truck next to the trailer. Mr. Christmas stated if the truck was put next to the trailer, he couldn't get into the house.

Bennett stated there is a topographical problem, however, this would be an unusual variance.

Mr. Christmas asked what constitutes a "grandfather" condition. He has parked here for over ten years.

Christiansen stated that is a legal question. This body's responsibility is not to provide legal advice. The board has to consider whether this constitutes a practical difficulty and if it is a harmonious use. We also have to look at what means are available for

relief. He is struggling with the appropriateness for the neighborhood. There is an alternative available, and that is to move the trailer somewhere else. While the Board of Zoning Appeals is sympathetic to economic difficulties, they are not considered as a condition for a variance. There is a responsibility to meet certain tests, as provided in the ordinance, for approval of a variance.

Bennett stated that "grandfathering" refers to a pre-existing condition prior to a Zoning Ordinance change. It is not applicable in this case.

Mr. Christmas stated if he has to move the trailer, he loses access to storage. This infringes on his right to utilize storage on his property.

Christiansen stated homeowners can store trailers on their property, but they have to be in a certain place on the property – that is in the rear yard. If enough of the test conditions are met, a variance may be granted.

Mr. Christmas stated he moves the trailer in the summer for racing.

Bennett stated this is not an active business at this time. It is a very noticeable now. In the past when it was moved often, it was not such a problem. There is one neighbor to the west, and that is the only neighbor visibly affected. He is struggling to determine that there are no other alternatives.

Chairperson Buyers stated he is struggling with the aspect of this being a harmonious relationship to the community. At this time, the neighbor to the west is not complaining. However, if any new owners were to move into the property to the west in the future, it could be a serious problem. He questioned if this board wants to sanction this use.

Discussion followed on dimensions of the property on each side of the yard and whether there were any other viable parking options available.

Christiansen stated the only alternative for parking the trailer on this property is to park it in the driveway. The ordinance does not allow this. It does not meet the standards of the community. The alternative is for the petitioner to move it off site. Parking in the front yard location in the driveway is not harmonious to the character of a residential neighborhood.

Mrs. Elizabeth Christmas stated if they did have access to put the trailer in the backyard, the neighbor to the west would complain because it would deter from their beautiful view.

Christiansen stated this board has to consider the impact as a whole and to consider requirements of the Zoning Ordinance.

In response to a question by Mr. Bennett, Mr. Christmas stated the race season runs April 1 – October 1.

Bennett suggested granting a variance for a specific time.

Majoros asked what is stored in the trailer.

Mr. Christmas stated he has mowers and a 4 x 4 jeep stored in the trailer.

Majoros noted there is a two-car garage on the subject property and asked what is stored in the garage.

Mr. Christmas stated his wife's car and a hot rod vehicle are stored in the garage.

Majoros stated the trailer appears to be serving as an unattached garage.

Director Gushman stated using trailers for storage is not allowed in residential areas.

Discussion followed regarding storage in residential areas and the available space surrounding this subject property.

Buck asked if the board is able to put a time limit on the variance. The business is in transition. In view of the economy, and the inability to put this trailer in the backyard, could we give a time limit for the petitioner to deal with this problem?

Chairperson Buyers stated that is an option. However, he is not seeing this as a case that has a harmonious relationship to the community or not self-created.

MOTION TO DENY APPEAL OF DANIEL AND ELIZABETH CHRISTMAS – MOTION FAILED DUE TO LACK OF SUPPORT (MOTION WITHDRAWN)

MOTION by Bennett, (no second), to deny the request of Daniel and Elizabeth Christmas, 32090 Nine Mine Rd., Farmington, MI 48336, for variance to Sec. 35-38(b)(2) regarding parking a 24' utility trailer in the west side yard behind the front wall of the home, on the basis that the petitioner has not established that the need for the variance is not self-created. Further, to grant the petitioner time to make the necessary adjustments, giving him until May 1, 2010, to allow for the petitioner to work with staff. Motion failed due to lack of support.

Christiansen clarified that the motion is to deny the variance but grant a time period for the petitioner to coordinate with staff with respect to complying with ordinance requirements. He further stated that there is already a process in place with staff Code Enforcement, and the court to work with petitioners. He thinks the motion should be to either grant or deny the request, or grant a variance with a specific time line for the appellant to temporarily keep the trailer parked in its current location.

Bennett stated the intent of the motion is to deny the granting of the variance and ask staff not to do anything until May 1, 2010. In other words, the denial would take effect May 1st.

Director Gushman stated if the request is denied, in order for the appeal to be reconsidered, there must be a substantial change in the request. For Example, the request might be to put the trailer on a different location on the property.

Chairperson Buyers stated the motion could be to approve the variance for 60 days.

Christiansen stated he does not believe this board has the authority to deny a variance with conditions. That is not under the authority of the Board of Zoning Appeals. There are other procedures in place for this process through staff and the court. On the other hand, if we are inclined to give time for him to comply with the ordinance, we can grant approval up to May 1st and direct that the trailer must be removed at that time. He thinks this would be the appropriate procedure.

Bennett stated the board has denied a variance with inclusion of conditions in the past. His motion was to deny the variance, but to delay taking further action until May 1st. He and Mr. Christiansen are saying the same thing, but from different positive/negative perspectives.

Christiansen asked if it has been a practice for this board to deny a request for a variance and ask staff for leniency. He thinks, procedurally, we are stepping into areas where we do not have jurisdiction.

Building Inspector Koncsol stated he doesn't recall this occurring. Previous cases were, perhaps, tabled or approved with conditions.

Bennett withdrew the above motion.

Buck stated he is inclined to grant a longer term variance, until October 31, 2010, to allow the petitioner time use the trailer and to get beyond the racing season. At that time, the petitioner would have to move the trailer permanently or comply with the ordinance requirements. Since the racing season goes through October, preferably, the motion to approve the variance should be until November 15, 2010.

Christiansen confirmed that Mr. Buck is inclined to look favorably on granting the petitioner temporary relief, and to grant the petitioner a temporary variance until November 15, 2010. This would allow the petitioner to temporarily utilize the trailer and give him time to consider alternatives in order to permanently move the trailer from the property or to comply with the ordinance requirements.

Buck confirmed that this is his intent.

Discussion followed on the suggestion of Mr. Buck to allow a temporary variance for the petitioner to utilize the trailer and to give time for the petitioner to permanently move the trailer or comply with the ordinance.

Bennett stated that was the intent of his previous motion. However, with our knowledge now that the trailer is being used for permanent storage, we are giving long-term approval to violate the ordinance. That is wrong. Two months is plenty of time to make adjustments.

Mr. Christmas stated he has been doing this for 10 years, and questioned why, all of a sudden, it is against the law.

Christiansen stated this board can only respond to the variance request. The ordinance has been in place, and now Mr. has been cited and has appealed to this body for relief. We are looking at alternatives.

Christiansen expressed support of Mr. Bennett's concerns about giving long-term approval for storage. He stated, we have to look at the request before us and to determine whether the variance request meets the tests for approval.

MOTION TO DENY APPEAL OF DANIEL AND ELIZABETH CHRISTMAS

MOTION by Christiansen, seconded by Bennett, to deny the request of Daniel and Elizabeth Christmas, 32090 Nine Mine Rd., Farmington, MI 48336, for variance to Sec. 35-38(b)(2) to maintain parking a 24' utility trailer in the west side yard behind the front wall of the home, on the basis that the variance request is self-created, the relationship to the adjacent land uses is such that it would not result in a harmonious condition with adjacent land uses in the neighborhood, it is not in character with the neighborhood, the granting of the variance is not enjoyed by other property owners in this neighborhood, and there are alternatives available to the petitioner. Motion carried, 4-1 (Buck).

Chairperson Buyers stated the appeal is denied.

Discussion followed on the importance of code enforcement and the difficulty of balancing code enforcement while encouraging business.

PUBLIC COMMENT

No public comments were heard.

COMMISSION COMMENTS AND ANNOUNCEMENTS

Chairperson Buyers discussed the recent board election and volunteered to vacate the chair if there was anyone interested in assuming the position.

Christiansen stated the board voted appropriately, and offices will be reconsidered at next year's election.

ADJOURNMENT

MOTION by Bennett, seconded by Buck, to adjourn the meeting. Motion carried, all ayes.

The meeting adjourned at 9:00 p.m.

John D. Koncsol, Building Inspector