

BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, September 7, 2011, in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 1976.

Chairperson Buyers called the meeting to order at 7:02 p.m.

ROLL CALL

PRESENT: Bennett, Buyers, Christiansen, Dompierre, Kmetzo, Majoros.

CITY OFFICIALS PRESENT: Building Inspector Koncsol, Director Gushman.

Chairperson Buyers indicated there were two official requests, one for variance, one for interpretation. He stated he had some personal commitments later in the evening that would necessitate his leaving the meeting prior to the Patrick Thomas matter. He indicated he would be present and participate in the zoning variance matter heard at the last meeting of Marc Pouliot and that Commissioner Christiansen will take over as chairperson after his departure..

MINUTES OF PREVIOUS MEETINGS

Director Gushman indicated that the only participants in the first hearing would be the attendees of the previous meeting according to the City attorney, they would be the only voting members.

Chairperson Buyers clarified that given that Majoros and Bennett were not present during that meeting, they would not be allowed to participate in discussion in the matter.

Kmetzo inquired that pursuant to Pouliot's request that there be a full voting board present (5 members) in the hearing and that only four were present at the last time, should another member be included in the discussion for his appeal.

Gushman responded that the way he understood it would be the full board that were present before, the four original members from last month's hearing,

Koncsol stated that since proponent requested a full member board of five, that Majoros would be warranted as the fifth member, however Bennett would not participate in the vote.

Christiansen indicated that according to the statute, that the full board sits when the full board is present, and that's the regular members. If the regular members are not in attendance, the alternate members sit. Once the alternate members sit they are there for the remainder of that particular item. If there is less than a full board because the number of regular members with the alternate still doesn't reach that full board level, the regular members can sit if they weren't here before so that there is a full board..

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MOTION by Christiansen, supported by Kmetzo, to approve the minutes of the previous ZBA meeting of July 6, 2011.

Motion carried, all ayes.

MOTION by Christiansen, supported by Kmetzo, to receive and file the minutes of the Planning Commission that were contained in the Zoning Board packet for the August Zoning Board meeting which had cancelled.

Motion carried, all ayes.

APPEAL OF:

Marc Pouliot
23973 Farmington Road
Farmington, MI 48336

Chairperson Buyers stated Mr. Pouliot is requesting a variance to Sec. 35-38(b)(2) to allow for the parking and storage of a 12 ft. enclosed cargo trailer along the north side of the house forward of the rear building line. City Code directs that all vehicles and equipment be parked in the rear yard.

Chairperson Buyers indicated this is a continuation of a matter of which the Board heard at the Petitioner's request, the purpose of tabling it was to allow the Petitioner to explore options and to basically report back to the Board as to what the results of that exploration was.

Chairperson Buyers inquired of staff as to what their take or observation on what has occurred with respect to the 23973 property and the conduct of the petitioners since the last meeting.

Koncsol stated that he and Gushman met with Mr. Pouliot and looked at options relative to trying to see if a compromise could be reached as to screening the vehicle so it would not be readily visible for all intents and purposes due to the arc of the street of Farmington Road as you go northbound and he has been amenable to discussing those options and considering those as a method of kind of reaching a happy medium if you will in the situation because of the topography and the visibility to push the trailer behind the property would become more visible to his neighbors than his present location where it is on the side, and screened with evergreens, should that be a viable option.

Buyers inquired as to the concrete apron, if any thought had been given on extending that and Koncsol indicated it had but they did not deem it a viable one.

Petitioner Pouliot addressed the Board and discussed the various options they had investigated including building an additional garage. He supplied the Board with the mortgage survey with the trailer drawn in on the property and additional pictures depicting various views.

Discussion was held concerning the hand-out and the challenges of the property and the various views represented in the pictures provided.

Christiansen asked the Petitioner to detail the landscaping he was proposing to screen the trailer from view.

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Petitioner responded that what he was proposing from the rear edge of the driveway forward, the whole straight part on the right side of the driveway towards the property line and up to where the Willow tree is planted that he was proposing to plant Arborvitae, either 6 or 7 feet tall and 3 feet apart to provide a screening.

Christiansen summarized that based upon the discussion from prior meeting Petitioner was requesting a variance to park a 12' enclosed cargo trailer on his property that he used for business, parking it in the same spot every day on hard surface, that Petitioner's property has a unique situation in that the river runs at rear of yard, there's an easement in the back of the yard, grade issues, limitation of egress and ingress, difficulty of alternatives in that adding on to the house in its configuration is not an option, that pushing it back and extending concrete apron is not viable because of the unique angle of the lot and how the house and driveway relate to it, thus making screening the best option for the request of variance.

Majoros asked for update of commercial versus residential vehicle and Koncsol responded that it can be an either/or situation and often comes down to signage. He stated that Arborvitae can grow rapidly and indicated it should be kept at 8 ft in height.

Buyers read the following comments the Board had received concerning variance: Edward Caram, 33118 Shiawassee, Farmington, no objection to one trailer, any changes must require new approval. Francis Dawdy, 24009 Farmington Road, Farmington, no objection. Joseph Pickler, 24034 Merrilynn Court, Farmington, objects to variance.

Christiansen corrected address of Dawdy being 29009, adjacent neighbor to west.

Brandon Seelbach, 24025 Farmington Road, addressed the Board and indicated no objection to the variance.

Buyers indicated that Petitioner had met the requests made by the Board at prior meeting and that screening is the best option.

MOTION by Christiansen, supported by Majoros, to approve request for variance, Sec. 35-38(b)(2), to allow for the parking and storage of a 12 ft enclosed cargo trailer on north and west side of house at 23973 Farmington Road, toward the rear building line, as Petitioner has demonstrated he has a practical difficulty in meeting the requirements of ordinance to store trailer in rear of house due to the unique configuration of lot and the orientation of the house and the lot which precludes or inhibits reasonable access to the rear portion of the property where the trailer is required to be parked by ordinance; that there is a unique condition on property that also precludes and prohibits parking in the rear due to topography in the rear of the lot and also due to easement for overhead power lines and that the unique condition of the lot is such that it appears to be in the rear yard part of the flood plain or flood area for the Rouge River, that the variance will not result in a negative impact or material detrimental situation for adjacent neighbors as the trailer is going to be parked on a hard surface area, maintained on that area and will be screened as proposed by the Petitioner; that the variance request is not inconsistent with other situations where there has been unique circumstances and alternatives which have been explored by the Petitioner as requested by the Board and have not proved to be viable and as alternative this would meet Petitioner's needs in order to maintain that trailer on the property; on the condition that the Petitioner provide the landscaping as indicated

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consisting of Arborvitae to be planted on approximate 3 ft centers along the entire north and west side of the trailer which is the north and west side of the concrete drive where the trailer is parked up and to the Willow tree that exists as shown in the photograph shown by the Petitioner, at a height which will be equal to the height of the trailer which is approximately 8 ft and that the Arborvitae will be maintained at that height so that they are not significantly greater than the height of trailer requiring Petitioner to maintain the Arborvitae at that height over time, and that the Petitioner coordinate planting of landscaping as indicated.

Discussion was held on motion and Buyers asked for clarification of height of Arborvitae and Christiansen responded the planting height at 6 to 7 ft and grow to 8 ft height screening the trailer but not significantly higher and maintained at that height.

Motion carried, all ayes.

Buyers stated that due to personal obligations he would be leaving the meeting at this time and apologized to the public and the Board and handed the chair of the meeting over to Christiansen.

Christiansen clarified in response to Bennett that ZBA is five member Board and two alternates that sit in place if regular member is not in attendance. He stated there are four regular members seated and Kmetzo will serve as alternate in Buyers absence.

APPEAL OF: Patrick Thomas
22432 Brookdale St.
Farmington, MI 48336

Request for interpretation as provided for under Sec. 35-214(c) as to whether "miniature pony sized horses" fall under the current City ordinance definition for Animal, domesticated. The proponent's desire is to have up to 2 of these animals on his property.

Petitioner Thomas addressed the Board and indicated he lives at the above address and his property is approximately 2.7 acres in size and wanted to verify with City if miniature horses are allowed under current ordinance which he read and is seeking guidance from Board on same.

Christiansen indicated that information was provided by staff with respect to petition. The following correspondence was received: 31713 Sherwood, supports request; 22594 Brookdale, supports request; 22597 Brookdale, objection to request; 31831 Grand River, supports request; 32090 Nine Mile Road, supports request; 32230 Nine Mile, supports request; 31831 Grand River, objection to request; 22433 Brookdale, supports request; 31712 Sherwood, objection to request with letter attached; 31751 Sherwood, supports request.

Bennett inquired as to request for interpretation because Board deals primarily with things that do not fit by definition on property, or is request dealing with putting ponies on property since it is not stated as such by Petitioner. He indicated interpretation may not belong to ZBA but rather to Council to consider their ordinance.

Christiansen responded that in his understanding the ZBA's responsibilities under statute

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is such to where they're entrusted with three things. One is to consider applications and requests for variances that are defined or considered to be nonuse bearing, typically variances or modifications or deviations from provisions in the ordinance that might be spatial, setback requirements, placement of trailers, nonuse. Two is use variance, application of Petitioner of requests to establish use or operate a use that is not specifically permitted or a special permit use in a particular zoning district. The third thing ZBA is entrusted with interpreting the provisions of the zoning ordinance and as such cases can be presented to Board where staff is not able to make determination or for reasons presented to Board have requested same to make interpretation as to a particular issue that staff would present to Board in request for interpretation. He indicated this particular petition falls within that as this presents a question as to whether this particular activity Petitioner wants to conduct, i.e. whether miniature pony meets definition in ordinance, and if not, then another step may be required to allow Petitioner to do what he wants to do, so the issue is whether miniature pony is domesticated animal.

Koncsol indicated that at first glance he thought this might be a use variance but after speaking to City attorney that is not standard that could be met here. He stated that under Sec. 35-214(c), it states "The Board has the power to interpret and determine the application of regulations established under this chapter in harmony with their purpose and intent." Since horses are not spelled out as domesticated, the direction was to bring to ZBA for determination if miniature horses or ponies are domesticated animals or not.

Further discussion was held concerning purpose of ZBA's hearing of Petitioner's request.

Christiansen read definition in ordinance of domesticated animal being "Animal, domesticated: Any animal that is commonly considered capable of being trained or capable of adapting to living in a human environment and being of use to human beings and which is not likely to bite without provocation nor cause death, maiming or illness to human beings, including birds (caged), fish, turtles, rodents, such as gerbils, rabbits, hamsters or guinea pigs, cats (domesticated), lizards (nonpoisonous) and dogs. Wild, vicious or exotic animals shall not be considered domesticated."

Christiansen stated it is Board's responsibility to determine whether miniature pony sized horses fall within that definition of a domesticated animal. He indicated in Petitioner's information in packet provided is a request for permission to keep two miniature small pony sized horses on said property and cited information in packet as well as what the pictures depicted included therein.

Dompierre stated that "any animal" was broad in range and presented too many variations that would have to be considered.

Kmetzo suggested looking to definition of exotic animal since domesticated was too broad ranged.

Koncsol cited definition of exotic animals as being "any animal or species not indigenous to the State of Michigan and not a domesticated animal, including any hybrid animals as part exotic animal".

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Bennett stated that "human environment" presented a problem and that ordinance should be reworked instead of Board trying to determine whether any animal can be in the human environment so as to meet the definition of domesticated.

Petitioner responded that when he thinks of human environment as being potentially existing within a city as distinguished in comparison to the wild. He agreed that the miniature ponies are not an "indoor" pet but offered his take on human environment.

Christiansen stated that he was remiss in not indicating earlier that when a notice goes out in most cases they are for nonuse variances, sometimes use variances, but not typically interpretation but there's no differentiation for notice requirements and goes out to property owners within 300 ft of the property for which the petition is submitted. The objections or the approval or the support or not read earlier, were with respect to keeping of the animal or not, whereas the petition is actually a request for interpretation so the objections and/or support are really not applicable to the issue at hand.

He inquired of Koncsol if there are provisions for the keeping of horses in Farmington, noting Farmington's agricultural history, and Koncsol responded that definition of farm is defined in zoning ordinance as "All of the contiguous neighboring or associated land operated as a single unit on which a bonafide farming is carried on directly by the owner/operator, manager or tenant farmer by his own labor or with the assistance of members of his household or hired employees, provided however that the land to be considered a farm here shall include a contiguous parcel of not less than 10 acres in area. Farms may be considered as including establishments operated as bonafide greenhouse, nurseries, orchards, livestock and poultry farms, aviaries, but establishments for the purpose of keeping fur bearing animals or game or operating fish hatcheries, piggeries, stockyards, stone quarries, gravel or dirt, sandpits shall not be considered farms", citing this being somewhat regulated on size. He indicated the research provided as to property size.

Gushman stated that most properties cited in research are probably 50 percent flood plain.

Further discussion was held concerning Petitioner's request.

Christiansen restated Board's purpose is to determine are miniature sized ponies domestic or not and restated ordinance.

Dompierre inquired as to how miniature horses are used therapeutically and discussion followed.

Christiansen opened the floor to discussion from the public.

Stuart Meredith, 22605 Brookdale, spoke and voiced no objection to it.

Christiansen reiterated the request as being one of interpretation and that's the only focus.

Kmetzo inquired as to where Petitioner keeps horses now and he indicated he doesn't own any currently.

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Koncsol stated that this matter is timely as there are other language clarifications that need to be made by Council on similar issues.

Bennett stated it would be prudent to table interpretation for six months pending discussion of Council concerning domesticated animals or the like and allow time for a clear definition of what the City ordinance is to be.

Dompierre stated that he understood Board's role tonight was to interpret ordinance as it stands now.

Christiansen stated there is no good purpose served to delay action of interpretation.

MOTION by Bennett supported by Majoros, move that the Zoning Board find that miniature pony sized horses do not meet the definition of domesticated animal as stated in Section 35-252 of City of Farmington Zoning Ordinances, and therefore do not meet requirement of being capable to living in human environment as they do not reside within a human confine or in this case house, and that they are an animal that is not similar in size to what is considered as specified in definition of domesticated animal and not consistent with the size of animal specified in definition of domesticated animal other than a dog

ROLL CALL:

AYES: Bennett, Christiansen, Majoros

NAYS: Dompierre, Kmetzo

MOTION carried 3 to 2.

PUBLIC COMMENT

No public comments were heard.

COMMISSION COMMENTS AND ANNOUNCEMENTS

None heard.

ADJOURNMENT

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

The meeting adjourned at 9:00 p.m.

John D. Koncsol, Building Inspector