

BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, September 5, 2007, 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 7:05 p.m.

ROLL CALL: Bennett, Buyers, Christiansen, Majoros, McShane.

ABSENT: None.

CITY OFFICIALS PRESENT: Building Official Gushman, Building Inspector Koncsol,

Recording Secretary Schmidt, City Attorney Schultz.

Define Participating Members

Chairperson Buyers explained that the Board of Zoning Appeals consists of five members and in order to act, in one way or another, a majority of the five members is required. He stated for any approval three of the five sitting members to grant a variance. He noted in the absence of that, if an item were denied, if somebody is aggrieved by a ruling of this body, the next option of appeal would be the Oakland County Circuit Court, located in Pontiac, Michigan. Chairperson Buyers noted there was a full board present.

Minutes of Previous Meetings

Motion by Bennett, supported by McShane, to approve the minutes of the previous meeting of July 11, 2007 as written. Motion carried, all ayes.

Motion by Christiansen, supported by Bennett, to receive and file the Planning Commission minutes of June 11, 2007. Motion carried, all ayes.

APPEAL OF: Paul Barber
Farmington Health Care Center
34225 Grand River
Farmington, MI 48335

Chairperson Buyers stated Mr. Paul Barber, of Farmington Health Care Center, was requesting several variances to the Zoning Code: Sec. 35-203(b), pertaining to relocating non-conforming use; Sec. 35-43(k), pertaining to accessory buildings; Sec. 35-184(c), pertaining to buffer zones; and Sec. 35-73, pertaining to setbacks; so that a three-sided 16' tall enclosure can be built to shield a 16' high oxygen tank near the south property line.

Mr. Paul Barber, MSA, MHA, Administrator for the Farmington Health Care Center, was present to explain the request for several Zoning Code variances and described the

BOARD OF ZONING APPEALS MINUTES -2-
September 5, 2007

Farmington Health Care Center, what they do and what they would like to do. He stated the Farmington Health Care Center is a licensed, skilled nursing center, which serves a broad spectrum of residents. He explained these residents consist of patients who need long-term care, who suffer from dementia, need short-term rehab, and ventilator dependent residents who need near acute care in a long-term care setting. Mr. Barber stated the purpose for the appeal is to benefit the residents who need near acute care in a long-term setting. He noted the present oxygen concentrator is noisy, produces heat, and requires a lot of maintenance. He also noted the portable suction machines sit near the bedside and are of a lesser capacity than the proposed unit they would like to install. He explained the piped in oxygen they would like to have is the same capacity as Botsford Hospital and they would like to match that capability.

Mr. Barber noted the benefits, which included: 100% oxygen capabilities matching the hospital's; allow a greater amount of suctioning; eliminate frequent transfers to hospitals with larger oxygen capabilities for residents fighting infection and a need for an increase in oxygen. Mr. Barber stated the proposed equipment would be gravity fed and would not require electricity or a generator in case of a power failure.

Mr. Barber reviewed the benefits to the community, which would reduce the amount of lights and sirens from emergency vehicles needed to transport residents to the hospital. He commented between January 1 and July 1 there were 56 emergency runs to the hospital that could have been avoided if the proposed equipment had been installed.

Mr. Barber stated the financial benefits to the Health Care Center for the bulk oxygen system included reduction of discharges from their facility to the hospital, eliminate extra work by the staff, reduce the disruption to the residents and reduce costs for ambulance transfers.

Holly Kaiser, Architect from Studio 5, reviewed a series of different plans showing the 16' wall, which was decided, was the only option they felt they could do. She stated the oxygen tank stands approximately 15' tall; 8" round with a reserve tank. She noted an alarm system would be installed in the Health Care Center to alert staff when the oxygen was low. The tank would be refilled once a month in the early morning.

Ms. Kaiser discussed the plan showing the 16' wall on the south side of the site. She stated this is the best location architecturally for access to the building. She noted the location would provide entrance to the existing storage room and the main oxygen shut-off valves would be in that location at the end of the corridor, which would eliminate all portable tanks. She commented the 16' wall would be 1' above the oxygen tank and landscaping will be used to minimize the two-story building. She stated the Health Care Center chose to create an enclosure that would match the finishes of their existing facility. Ms. Kaiser noted the area is very small and the proponent felt this was less obtrusive than having it placed in other locations and also it would not affect DTE lines.

Ms. Kaiser reviewed the plans at the base showing the elevations and plans of both cases of a 16' high wall and a 10' high wall, which might have to be a maximum of 12' due to

BOARD OF ZONING APPEALS MINUTES -3-
September 5, 2007

an aluminum vaporizer that is on top of the tank. She stated the area would be heavily landscaped. She noted in the desired Option 1 they would re-stripe the back parking lot in order to create extra parking and rework some of the existing landscaping.

Ms. Kaiser stated DTE would have to reroute the electric wires in Options 2, 3, and 4, which would be very costly. She further noted that if the tank were horizontal as in Option 2, it would cost another \$15,000 and would take an extra 6 months to obtain the tank since it is pre-engineered for the site.

Ms. Kaiser reviewed Option 3 stating the trees currently in that location would have to be removed, electric lines rerouted, re-working of piping, and a great amount of engineering to the driveway for trucks in order to accommodate a new tank containment unit. She noted Option 3 would also be very costly.

Ms. Kaiser reviewed Option 4 and stated more parking spaces would be lost to accommodate the new tank containment unit.

She commented more land is needed and the property is landlocked. She stated they want to minimize any disruption to the surrounding community, and to provide better care for their residents. She noted their goal is to beautify the area and downplay that they are trying to enclose an oxygen tank. She explained the only location they feel they can put the oxygen tank is as noted in the choice of the Option 1 plan.

Ms. Kaiser stated when the building was built in 1966 it was zoned R1 and the facility has been operating as I1 and noted it has not changed its use. They are trying to provide better care for their patients by installing an oxygen storage tank. She commented it is a difficult project because they have to satisfy use requirements since it is in a residential area, their dimensional aspects, and also be sensitive to the residents in the surrounding neighborhood.

Chairperson Buyers requested comments from the audience be reserved until the Public Comments section of the meeting.

Mr. Bennett asked if the request was being changed from 16'. Chairperson Buyers asked if the petitioner was withdrawing the one portion of the petitioner's request, which is the variance to Sec. 35-43(k) pertaining to height of accessory buildings 15' maximum. Ms. Kaiser replied she noted at the bottom of the application "the height proposed is 16': we are currently investigating an enclosure of about 6' if possible and this would negate a height variance". She stated their intention was to present a lower height at this meeting, but they were unable to obtain the 6' wall height. Ms. Kaiser stated if the only way to obtain the tank was to go to a 10'-12' wall, she felt if the tank would fit in the location, her client would make this as an option.

Mr. Bennett asked what they were to discuss. He asked if the proposal before the Board was the one to discuss or not.

BOARD OF ZONING APPEALS MINUTES -4-
September 5, 2007

Chairperson Buyers asked City Attorney Schultz, if from a legal and propriety standpoint acceptable for this body to consider this evening a modified request, whether it is in the form of Option A, or 1, 2, 3 or 4, or does the Board need to send the petitioner back to the drawing boards, have it published in an official, correct fashion and then come back and revisit the issue. Attorney Schultz replied that his understanding is it has been noticed for the most extensive set of variances they could think of: height, setback, everything including these variances. He stated they advise the Board anything less than those variances is fair game under the Statute because the Board has the authority to grant the lesser variance than those requested. Attorney Schultz noted the key is to ask for everything; you might get a little less. He stated there are several options presented at this meeting: Option 1 with some modifications; and the other options if those are of lesser variances, the Board is inclined to grant, the only caution to be, it sounds like they are voluntarily suggesting at this point, only Option 1 with the reduced height. He stated if the Board gets to Options 2, 3, and 4 before they make a motion to grant lesser variances like that, the petitioner should be put on record whether or not they are offering another option. Attorney Schultz commented the Board has full range because of the way the matter has been offered.

Mr. Bennett referred to the information from Studio 5 and Mr. Barber, the facility has been operating as an I1, but for the Board's and the public's consideration it is R1, legal non-conforming use. He stated I1 should not be confused with R1; it is a R1 legal non-conforming use. He also noted it was listed in the application that previous changes had not required an ordinance variance. Mr. Bennett commented that was not an accurate statement since he had been a part of five different variances that have been granted through the Zoning Board of Appeals, the Planning Commission or the City Council. He stated the five are only part of the record of the Building Department that the expansion since 1965 and the amount of times that they have dealt with a legal non-conforming use. He noted he knew it exceeded 10 expansions. He stated those facts need to be before the Board.

Chairperson Buyers asked if the Fire Department, State Fire Marshall, and other officials had been contacted regarding safety issues. Mr. Barber replied they had met with the Fire Marshall of the City and this proposed system meets all codes. Ms. Kaiser stated it meets NFPA and the State of Michigan Codes.

Ms. Kaiser reviewed the enclosure, noting there will be bollards around the enclosure; striped parking spots on either side to minimize the closeness of a vehicle to the tank and construction of the wall will be block and brick. She stated the bollards and the enclosure are approved by the State of Michigan and the NFPA. She noted the only opening would be in the front at the service entrance. Ms. Kaiser commented a chain link fence could be used with bollards at a certain dimension away from it.

Mr. Barber stated smaller tanks of oxygen are currently delivered and are stored in the building.

Mr. Christiansen asked the petitioner if they had an opportunity to coordinate with the community-planning consultant and read their report and recommendations. Ms.

BOARD OF ZONING APPEALS MINUTES -5-
September 5, 2007

Kaiser replied the 10' wall was a new development. She stated they have reviewed the report and noted a couple of discrepancies and noted the type of facility is incorrect where it relates to parking; it is not an outpatient facility. She commented she has not seen the new report from LSL. She noted their goal is to do the absolute best they can do, to meet as many recommendations and improve the site as much as possible.

Mr. Christiansen requested that the consultant present the report from LSL, dated August 31, 2007.

Sherrin S. Hood, AICP, Senior Planner, LSL Planning, Inc. stated she was at the last Planning Commission meeting to discuss the site plan application and the Planning Commission directed the applicant to appear before the Zoning Board of Appeals and address the issues as presented tonight.

Ms. Hood stated three issues needed to be addressed and the report is based on the original site plan that was handed out at the Planning Commission meeting. She stated the first issue was the non-conforming use of the site: the applicant has demonstrated that the site can not reasonably be used for any of the uses allowed within the current zoning district designation and that permitted uses in the R1 district are predominantly single family residential uses and public, civic, churches, etc. She noted the site has been in the current use for several years and is not suitable for the permitted uses in the R1 district. She stated LSL feels the request meets the test that the site cannot be reasonably used as one of the uses specified in the Zoning Ordinance.

Ms. Hood stated the second test is the need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. She noted the size and physical shape of the property did not leave a lot of options and those unusual circumstances to the site warrant an investigation.

Ms. Hood stated the problem and resulting need for the variance had not been self-created by the applicant and/or the applicant's immediate predecessor.

Ms. Hood noted the capacity of the roads in that the capacity and operations of public streets, utilities, other facilities and services will not be significantly compromised and that there was a significant change in the proposed use that would compromise public services and utilities.

Ms. Hood stated the use variance would not alter the essential character of the neighborhood nor be of detriment to adjacent properties. She noted LSL felt a 16' wall would alter the character of the neighborhood since it was close to the property line. She commented that in the report they noted other options would not alter the character of the site such as that offered in Option 4. Ms. Hood stated Option 4 was desired by LSL.

Ms. Hood reviewed the final test that the variance requested is the minimum necessary to permit reasonable use of the land. She stated Option 1 is not the minimum necessary

BOARD OF ZONING APPEALS MINUTES -6-
September 5, 2007

to accomplish their goal. She referred the applicant back to Option 4 as the only option of the four submitted that does not require any dimensional variances for the tank height and setbacks.

Ms. Hood stated there are tests relative to the dimensional variances. She referred to the height in Section 35-43(k), which permits accessory structures up to a maximum of 15' in height and in Option 1 the proposed screening wall is 16' tall. She noted Option 1 does not meet the rear yard setback of 35'. Due to the similarity of both variances she stated they reviewed them concurrently.

Ms. Hood reviewed the basic standards for dimensional variances. She noted the compliance with the strict letter of the restrictions governing area; setbacks, frontage, height, bulk, density or other dimensional provisions would create practical difficulties. She commented the practical difficulty may or may not exist in regard to the overhead power lines and that issue needs to be investigated before anything is determined.

Ms. Hood repeated that LSL felt Option 4 is the best option with respect to the neighbors and the community at large. She stated the Zoning Board of Appeals couldn't consider waiting period and monetary issues incurred by the Health Care Center. She noted the Board has to look at what is reasonable and practical in respect with the use of the site. She stated Option 4 could be a viable option and they don't know if there is a practical difficulty in this case.

Ms. Hood reviewed the second test where granting of the variance would do substantial justice to the applicant as well as to other property owners in the district. She noted the decrease in ambulances due to the new oxygen facility does provide substantial justice to the applicant and other property owners in the district, but alternatively they might not be served substantial justice if there is a 16' wall in their backyard. Again, she referred to back to Option 4 as the best option that would provide substantial justice to the applicant and the community at large.

Ms. Hood reviewed the third test that the requested variance or appeal can be granted in such fashion that the spirit of these regulations will be observed and public safety and welfare secured. She stated Option 4 is definitely in the spirit of the ordinance, which addresses special impacts to the neighbors and still allowing the applicant to use their site in a reasonable way.

She stated the fourth test "Not Self-created" had been discussed before.

Ms. Hood stated they do believe there are not severe safety issues in respect to the oxygen tank since they are regulated by the Federal Government, but they would like to see at the Planning Commission site plan review level some communication with the Fire Department of the City to make sure they have had a chance to review it. She commented that something in writing might be provided to the Planning Commission. LSL did not see the storage of the tank on site as an additional fire hazard.

BOARD OF ZONING APPEALS MINUTES -7-
September 5, 2007

Ms. Hood reviewed the next test of relationship to adjacent land uses. She noted the development permitted upon granting of a variance shall relate harmoniously in a physical and economic sense with adjacent land uses and will not alter the essential character of the neighborhood. She stated in respect to Option 1 the 16' height and closeness to the property line would not be in character with the neighborhood. She noted they were looking to the residents of the neighborhood to address the issue of the 16' enclosure and tank, but LSL did not feel it was harmonious to the neighborhood.

She stated the last test was minimum variance necessary wherein the variance requested is the minimum necessary to permit reasonable use of the land, which she noted had been discussed before.

Ms. Hood reviewed other site considerations: weight restrictions on the site and public roads since the trucks will be approximately 80,000 lbs.; landscaping which would include replacing the paved, striped areas around the storage area with landscaping and upgrade the existing wood fence along the rear property line and repair or replace any portions that are in disrepair; structure design and construction and if there will be gates on the front of the enclosures and they materials they will be made of; and other safety considerations included that the City Fire Department should be consulted for any concerns they may have related to the outdoor storage of compressed oxygen, the applicability of any National Fire Protection Agency (NFPA) standards should be verified, suggest the applicant provide a raised curb at the edges of the striped pavement as shown on the site plan, unless prohibited in the National fire Protection requirements, these striped areas should be removed and replaced with planting areas to screen the structure; and documentation of all appropriate correspondence with the MDEQ, Michigan State Police Fire Marshall, local fire department, and Oakland County Health Department, and written compliance with any of their requirements shall be submitted.

Ms. Hood stated LSL's recommendation does not object to the relocation of the oxygen portion of this facility to a bulk storage tank, in order to stay competitive in their market with other health care facilities and provide better care to their residents, and for that reason they do not want to stand in the way of their service. She stated LSL does object to their dimensional variances and recommend not granting either of the dimensional variances, but instead directing the applicant to pursue Option 4. Ms. Hood asked Attorney Schultz if the applicant were directed to use Option 4, would they have a reason to come back if it seemed unfeasible to move the overhead power lines and request a similar variance to one of the first options 1 or 2. Attorney Schultz stated he did not know the expense involved in moving the overhead power lines and noted it is a factor that the Board takes into consideration. He pointed out that the financial difficulty of a particular regulation isn't considered to be a dispositive for the Board's consideration. Mr. Schultz stated it is ultimately the Board's decision, but financials are usually not a dispositive fact.

Chairperson Buyers asked Ms. Kaiser if she had a response to the LSL's report presented by Sherrin Hood. Ms. Kaiser stated she understood why Option 4 was the option of preference and noted the money involved was a deal breaker for the Health

BOARD OF ZONING APPEALS MINUTES -8-
September 5, 2007

Care Facility, not only for rerouting of the power lines, but also the entire architecture involved. Ms. Kaiser commented they realize they need to talk with the Fire Department, but did not see a problem since they had not changed the site, but will obtain written comments on that issue.

She commented they would see that the local roads could accommodate the weight of the tank.

Ms. Kaiser stated their desire was Option 1A – 1B and understood the choice of Option 4 by LSL. Mr. Barber stated they had ruled out other options on the property and it just was not feasible.

Mr. Christiansen stated the Health Care Center is an existing use in the community and he appreciated they are part of the community and that is not an issue for him. He stated the Board is trusted with the charge of looking at what the existing conditions are, the regulations of what is being requested and the impact and if there is justification for it. He questioned if they had outgrown the existing facility due to their current needs and existing condition of the facility. Mr. Barber stated it is possible and the need is growing. Mr. Christiansen responded needs change and part of the responsibility of this Board on variance requests is to see if there are other viable alternatives.

Mr. Majoros asked if there could be an alternative for the Health Care Center in that they would have a different kind of constituents with other health needs that would not require the bulk oxygen tank to be installed as proposed. The director of their respiratory therapy stated they are a 124-bed facility and approximately 55 of their patients would benefit from this tank installation. He stated there are only 5 hospitals in the State of Michigan that provide ventilator care. He noted residents in this area who needed ventilator care would be displaced to other areas of the State.

Mr. Majoros asked if the tank was standard sized and re-engineered to be placed horizontally. Ms. Kaiser replied they investigated other options and were told the vertical tank was the standard and took up a smaller footprint. She noted the horizontal tank is not used very often and a tank would need to be engineered to go onto the site.

Ms. McShane asked if they would need to increase their staff. Mr. Barber replied they would not increase their staff and the unit would be in the wall.

Ms. McShane asked if there would be smoking near the unit. Ms. Kaiser stated the piping of the unit went into the ground and was not an issue.

Ms. McShane inquired what servicing was required on an annual basis. Ms. Kaiser responded they would just be refilling the tank.

Ms. McShane asked what the longevity of the tank was and if there was an inspection every year. Ms. Kaiser replied there was nothing in the tank to erode it and inspections would be conducted annually. Mr. Barber stated the tank should last 15 to 20 years.

BOARD OF ZONING APPEALS MINUTES -9-
September 5, 2007

Ms. McShane noted the changes that have occurred in the past at the Health Care Center. She stated her concerns, which included truck noise, size of the truck on Gill Road being a City road versus Grand River, which is a State road, and the look of a tower for the residents. She did not feel the look of a tower was compatible for a residential neighborhood. She noted there were other options and that the pros included eliminating approximately 200 service trucks per year, probably will save lives, increasing the efficiency of this Center and making it viable to stay here. She stated she had reservations about Option 1.

Chairperson Buyers asked Mr. Barber what he was asking the Board to consider. He questioned if they wanted a decision on revised Option 1 with a horizontal orientation to an oxygen tank in a 10' tall enclosing wall, which does not necessitate a variance to Section 35-43(k) dealing with the 15'. Mr. Barber requested the Board consider revised Option 1.

Chairperson Buyers asked if there would be any noise from the apparatus on either of Options 1, 2, 3, or 4, that would be heard from the surrounding community. Mr. Barber replied the only noise that would be heard would be from the truck when on a higher idling while filling the tank for approximately 15 minutes.

Mr. Christiansen asked what the current loading and unloading practice is. Mr. Barber showed the entrance and exit on the display board.

Mr. Bennett stated he had some comments he would like to make after comments from the public were heard.

Chairperson Buyers asked the applicant to describe a typical emergency run. The director of respiratory therapy replied the nature of a 911 call is lights and sirens. He stated sirens aren't on at the site during evening, but they are on when leaving on Grand River. He noted the lights remain on.

Public Comment

Earl VanRenterghen, 24032 Earl Court, stated he has lived in Farmington for 31 years and have seen many changes. He stated he did not feel the Health Care Center had lived up to their promises that were made in the past. He noted water problems in his basement from water running off the Health Care Center's property. He stated people park in his driveway, and they have heard screaming. He commented he felt they had outgrown the facility. He did not want his property to decline. He did not want a 16' structure. He wanted the tank to be underground. Chairperson Buyers explained the request was now for a 10' wall instead of the 16'. Mr. VanRenterghen stated his concerns about parking.

Frederick Sewell, 24008 Earl Court, stated he appreciated the different alternatives that had been discussed, but he had not heard a reason why the tank could not go in the courtyard, which would be away from setbacks. He noted he hears a loud generator noise from the Center. He appreciated Chairperson Buyers about the fire department.

BOARD OF ZONING APPEALS MINUTES -10-
September 5, 2007

He also appreciated the comment regarding the facility outgrowing their space, and the planning review with the alternatives. He asked how high the tower was if the wall was going to be 10' tall. Ms. Kaiser responded 9'7" with a ventilator on top. Mr. Sewell asked if it could be disguised similar to cell phone towers. Ms. Kaiser replied they would have 8' of plantings. Mr. Sewell voiced concern regarding maintenance of the proposed plantings. He voiced additional concern regarding filling the tank in the early morning.

Mr. Barber stated the tank would be filled between 7:00 a.m. and 11:00 a.m.

Mr. Sewell asked for clarification of Option 1 and Option 4.

Ms. Kaiser explained placing the tank in the courtyard was not a viable option since all of the patients have windows, which is according to code, and they open to the courtyard. Also the courtyard is enclosed and safe for the patients to be taken outside to enjoy the plantings. She noted the windows are needed for egress in case of an emergency.

Discussion followed regarding burying the electric wires underground.

Mr. Sewell thanked the Board members for their well thought out comments.

Chairperson Buyers noted there were no communications received regarding the issue except a letter and photographs from Mr. VanRenterghen who voiced his concerns during Public Comment.

Mr. Bennett stated he has served on both the Planning Commission and Zoning Board and noted that most of what had been discussed at this meeting has to do with the Planning Commission rather than the Zoning Board of Appeals. He did not want to confuse what the Planning Commission would deal with. He stated if the issue passed it would then go to the Planning Commission regarding plantings, directions, and road bearing.

Mr. Bennett stated if there was a continuation of legal, non-conforming, use by the Health Care Center, they should go before City Council and request six lots in the subdivision rezoned in order to make it possible.

Mr. Bennett voiced the following concerns: a legal non-conforming use was approved in 1965 and at least 10 times thereafter and 5 he participated in. He stated they have legally altered the non-conforming use and made it more extensive and involving more. He also questioned if the Center had outgrown their facility. Mr. Bennett commented that if this issue were granted when would another issue come up since there has been regularity in the amount of requests from the Health Care Center. He asked when it would stop.

Mr. Bennett stated he was prepared to make a motion.

BOARD OF ZONING APPEALS MINUTES -11-

September 5, 2007

Chairperson Buyers echoed Mr. Bennett's sentiments regarding prior petitions in the past. He stated it did not necessarily mean to deny the petition or was it relevant to this petition.

Chairperson Buyers noted the petitioner was making a change of a favorable nature by reducing the overall size, scope and negative impact upon the surrounding neighborhood of the apparatus. He voiced concern that many of the comments, suggestions and considerations cited by LSL Planning, pertaining to documentation from MDEQ, checking with the City Fire Department, etc. could be done before the Board considers any of the 4 options.

Mr. Christiansen clarified that the Board was to consider Option 1, with the caveat of reducing the tank from the proposed 16' down to 10' so that it is a horizontal tank and that structure is to be 10 x 20 on the side and 25 on the back. He noted that would require a variance of 2' since the max is 8'.

Sherrin Hood stated the maximum height for the screen wall is 8', but she was looking at it as an accessory structure, which is 15'. She noted she felt it was a gray area and was a decision to be made by the Board.

Mr. Christiansen clarified the 3 variances noting the height was reduced from 16' down to 10', rear yard setback requirement and the non-conforming use question.

Chairperson Buyers stated the petitioner requested a variance to 4 sections, which included height, rear yard setback, non-conforming use and buffer zone.

Ms. Hood noted the buffer zone is essentially the same as the landscape section.

Mr. Christiansen commented the distinction needs to be made for technical reasons.

Attorney Schultz stated it was noticed as an enclosure instead of a wall. He commented it was a decision to be addressed by the Board.

Mr. Christiansen clarified that LSL Planning recommended denial of the height and setback variance and recommending the non-conforming use variance, which is in accordance with Option 4.

Ms. Hood responded that he was correct.

Mr. Christiansen referred to the comments made by Mr. Bennett regarding rezoning of adjacent properties in the residential area since the Master Plan does not call for rezoning at this time.

Mr. Christiansen noted they had discussed economics, existing use, and visual concerns from the neighbors, truck traffic, and fire hazard. He stated he would like comments regarding the issue from the Fire Chief.

BOARD OF ZONING APPEALS MINUTES -12-
September 5, 2007

Mr. Christiansen commented he would like to know about the history of the Health Care Center to understand the changes that have occurred in the past. He noted the petitioner was aware of the other options. He discussed placement of the tank underground, location, and that relocating electric service needs to be explored.

Mr. Christiansen stated the tank and enclosure is an accessory structure in the rear parking lot area, which will occupy parking spaces and will look, feel and act as an accessory structure. He commented he looked at this issue as an expansion of the existing non-conforming use.

Mr. Christiansen encouraged the petitioner to take these comments to table this particular case before the Board. He stated he could not support Option 1 with the 8' on the lot line. He noted the petitioner should come back to the Board with something that is more potentially in line with what the Board might be able to look at more favorably. He stated he did not have a problem with Option 4. He felt the issue should be tabled.

Ms. McShane clarified that the vote from the Board was on Option 1 and no other considerations.

Mr. Bennett noted the Board was voting on the proposal listed on the documentation with a change from 16' to 10'.

Mr. Bennett stated his considerations are in the whole matter, which will be expressed. He commented it is R1 and there is a history of one more step and moving, and with the understanding that all that needs to happen is for a motion to be tabled or the petitioner return with a change of one word in their proposal and the Board could reconsider.

Attorney Schultz stated it would have to be in substantive.

Motion by Bennett, supported by McShane, to deny the variance case presented by Paul Barber, on behalf of Farmington Health Care Center, for the following reasons:

1. The petitioner has not established unique circumstances regarding the subject of the property, because it is zoned R1 and is a legally non-conforming alteration.
2. The petitioner has not established that the need for the variance is not self-created. The use is extended use of a non-conforming use of this property.
3. The petitioner has not established that the use would relate harmoniously to the physical and economic sense of the adjacent properties; meaning the nursing home is not compatible to a R1 residential dwelling.
4. The petitioner has not established that the proposed use presented is the minimum, therein, necessary because there are other proposals which would allow a change of the proposal

BOARD OF ZONING APPEALS MINUTES -13-
September 5, 2007

5. The petitioner has not established that with a granting of the variance the spirit of the ordinance will be observed with public safety, security and substantial justice is done. This relates to the parking, the screening, and the traffic problems will continue because of the overcrowding of the small size of the property.

Motion carried, all ayes.

Chairperson Buyers stated the petitioner's variance request, as stated in the revised petition, is denied.

Chairperson Buyers reiterated Mr. Christiansen's comments that the Board was not unaware of the economic participation in the community that this facility has had. He stated it was a long standing resident and he hoped it would continue to be. He commented that this body is charged with the overall protection of more entities than the petitioner. He stated he would not foreclose further petitions if more things were done.

Chairperson Buyers stated the August 31, 2007 report from LSL Planning would be provided to the petitioner and requested that more due diligence be done with respect to the Fire Chief, etc., this body may reconsider this matter, but it is the petitioner's call.

Attorney Schultz requested a couple of clarifications, through the Chair, including a confirmation that a motion by Mr. Bennett was on the request to expand or relocate the use, and that the dimensional variances for height and setback were not specially addressed.

Mr. Bennett stated his motion was made on wording with the alteration of 16' to 10'.

Mr. Schultz stated there needed to be a motion on the buffer issue and setbacks.

Mr. Bennett clarified that because of the opening statement was to deny the variance, as requested by and the requested by is Section 35-203 (b). Attorney Schultz stated by denying the use variance there is no need to address the non-use variance or setback or buffer because of his initial motion.

Mr. Bennett, on advice, of Counsel, to be naming all of them, but if it is not necessary, legally, then we would go just to 203(b).

Attorney Schultz stated there needed to be a motion that would directly address the tests for the main variance and whether or not the Board is going to allow this use to be expanded or located.

Mr. Schultz stated, dealing with the setback issue is a separate variance with a separate test and the Board does not have to address that once they denied the first variance. He further stated let the record show that is how he understood the motion.

BOARD OF ZONING APPEALS MINUTES -14-

September 5, 2007

Mr. Bennett stated his intention was to spell out 35-203(b), 35-43(k), 35-184(c) and 35-73 as being stated. He stated he would have no problem letting the motion read, "that the variance be denied to Paul Barber and the facility, of statement of 35-203(b).

Chairperson Buyers asked Counsel if that statement, following motion, second and passage of the previous motion, is approved by Counsel, than so be it. He stated otherwise, the Chair would entertain a revised motion and will do the process again.

Attorney Schultz stated he felt the intent of the motion was to have one motion to cover use variance and non-use variance and he felt that was not the way the Board would want the motion to stand. Mr. Schultz recommended revising the motion.

Chairperson Buyers entertained a motion to reconsider the appeal of Paul Barber for the Farmington Health Care Center in his request for variances to Sections 35-203(b), 35-43(k), 35-184(c) and 35-73 of the Farmington Zoning Ordinance.

Ms. McShane asked for clarification of the motion. Attorney Schultz stated the Board needed to reconsider the motion that has been approved and passed, put it back on the table for reconsideration and a motion to be made again with respect to 35-203(b).

Motion by Bennett, supported by McShane, to reconsider. Motion carried, all ayes.

Motion by Bennett, supported by McShane, to deny the variance of the case for Paul Barber, Farmington Health Care Center, as sought in Section 35-203(b), for the reasons already stated. Motion carried, all ayes.

Chairperson Buyers stated since the motion to deny Section 35-203(b), a motion needed to be considered for 35-43(k), 35-184(c) and 35-73.

Mr. Christiansen recommended that as a Board having denied a request for variance of 35-203(b) that no further action is required on the additional variances. Attorney Schultz he had no problem with that statement.

Motion by Bennett, supported by Majoros, that the record show because of the action taken on 35-203(b) no action is required on 35-43(k), 35-184(c) and 35-73. Motion carried, all ayes.

Mr. Christiansen questioned item 5 on the agenda, which addressed Public Comment. He stated that item 5 was for comments by the audience not pertaining particularly to the variance issue.

Chairperson Buyers opened the proceedings for public comment.

Mr. Sewell stated he felt the distinction between Zoning and Planning is important he appreciated the clarification.

BOARD OF ZONING APPEALS MINUTES -15-
September 5, 2007

Mr. VanRenterghen thanked the Board for listening to his comments and their consideration regarding the issue of the Farmington Health Care Center.

In answer to a question from the audience, Chairperson Buyers stated notification would be sent out if there were a revised petition.

Mr. Christiansen stated the petitioner could come before the Board with a new petition, which would be substantially different. He noted there would have to be some determination what that would be. He commented they could not request the variances as requested in the last petition that was acted on before this body.

Mr. Barber stated they could not come before the Board with reconsideration regarding the same request.

Mr. Christiansen replied it would have to be substantially different.

Attorney Schultz stated the rules say the decision is final unless there are substantive changes in the original plan to be determined by the Board.

Mr. Bennett stated the substantive change would be if they came back to the Board with Option 4.

Chairperson Buyers stated the motion was not denied for lack of information.

Ms Kaiser stated she was not given the new report from the consultant.

Mr. Christiansen stated it was up to the petitioner to be prepared.

Ms. Hood stated none of the information was new from the Planning Commission report, which was received by Studio 5.

Motion by Christiansen, supported by McShane, to adjourn the meeting. Motion carried, all ayes.

The meeting adjourned at 9:29 p.m.

John D. Koncsol, Building Inspector

BOARD OF ZONING APPEALS MINUTES -16-
September 5, 2007