

## BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, January 6, 2010, 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.

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

**ABSENT:** Buck.

**CITY OFFICIALS PRESENT:** Director of Public Works Gushman, Building Inspector Koncsol, Recording Secretary Sechmidt.

### MINUTES OF PREVIOUS MEETINGS

Motion by Bennett, supported by Christiansen, to approve the revised minutes of the previous meeting of September 2, 2009, as submitted. Motion carried, all ayes.

Motion by Bennett, supported by Christiansen, to receive and file the minutes of the Planning Commission meetings of September 14, 2009, October 12, 2009, and November 9, 2009. Motion carried, all ayes.

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

Chairperson Buyers stated Mr. Ralph Dallo, on behalf of Happy's Pizza at 21998 Farmington Road, was requesting 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 business.

Mr. Dallo applauded the city staff for doing their job. He commented his secretary called the Building Department to see if the use of neon was allowed in the city, but noted it could not be around the windows, which was stated after the fact. He explained Happy's Pizza have over 87 locations that have neon borders around the windows along with the Happy's Pizza Sign, their logo, and listing of food items. He referred to pictures of Happy's Pizza located in Southfield, Warren, and West Bloomfield, which showed the corporate look

Dallo passed out pictures noting the signs that show "We Deliver", and the "Phone Number". He commented it was his mistake to not check with the City on the definition of neon borders before they installed the neon border lighting. He noted if he had known the neon border lighting was not accepted in the City, he would have appeared before the Zoning Board of Appeals for approval. He stated the job did not need a permit since the electrical outlets already exist.

Chairperson Buyers requested locations of the Happy's Pizza Stores shown on the pictures that Mr. Dallo handed out.

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Mr. Majoros noted he drove by the store in Warren that noted ribs, chicken, and what offerings were at that location. He commented the store in Farmington does not reflect the food offerings for a reason. Mr. Dallo replied they were cited and had received a phone call from the staff explaining Happy's violation. He commented the posting of offerings was part of Stage 2. He stated since times are tough they operate in stages according to money in hand.

Mr. Majoros questioned staff why the blue sign showing the delivery and phone number is allowed currently. Mr. Koncsol responded the neon border is in violation. He noted all signs on a wall cannot exceed 10%.

Mr. Dallo referred to the nail salon with the allowance of window neon trim.

Chairperson Buyers noted the letter from the City of Farmington, dated September 15, 2009, to L T Nails that they were a business that was in existence at the time of the revised ordinance and there is a future need for them to modify these circumstances, but they are permitted as a time component since they were in existence at that time. He commented the nail salon issue is different from the new business of Happy's Pizza.

Mr. Dallo noted he did not want to be in violation of the rules of the City.

Chairperson Buyers requested that Mr. Koncsol review the circumstances leading up to the appeal by the petitioner since April or May of 2009. Mr. Koncsol noted the citations issued to the petitioner and in response to Magistrate Phenev the chances that a variance is granted were slim to none since the petitioner could not demonstrate any practical difficulty or hardship. Mr. Koncsol commented Magistrate Phenev directed the owner to keep the neon lights off until an appeal was made to the Zoning Board. He further noted Public Safety was monitoring the lights during the evening hours until the ZBA meeting and that a new citation would be issued if the lights were on at any time before this issue is resolved.

Mr. Dallo responded to a question by Mr. Bennett that he was cited since he installed the neon along with Happy's Pizza.

Mr. Dompierre asked Mr. Koncsol the names on the sign permit. Mr. Koncsol noted both parties were on the sign permit. In response to a question by Mr. Dompierre, Mr. Koncsol responded the issue at hand would not come in since it was the outline of the windows. Mr. Koncsol commented they could use a few small signs to comply with the 10% maximum.

Mr. Majoros verified the business was a new construction for the addition and the rest of store was a remodel.

In response to a question by Mr. Majoros, Mr. Dompierre noted that according to the Commercial Code electrical plugs were placed every 8 ft.

Norman Murad, manager of Happy's Pizza, noted the lights were not working on the outside of the building on October 31, 2009 and he turned the neon lights on to provide more lighting inside and outside. He explained the neon lighting helps to bring in more business.

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Mr. Christiansen explained the Planning Commission had reviewed and updated the sign ordinance for the Master Plan on recommendations made by the City's planning consultants. He commented these amendments were approved by City Council. Mr. Christiansen noted some of the changes that were included provided provision for bringing nonconforming signs into compliance. Mr. Christiansen commented anything that exists before that new ordinance that is not in compliance is grandfathered. He stated it is a legal nonconforming situation for a period of time. Mr. Christiansen reviewed Sec. 35-48(f)(1), Exterior Lighting. He noted the Planning Commission went through a Site Plan Review and that the site plan amendment included some rehab to the exterior façade and also included a bump out on the western end of the building, which he noted was approved. He did not recall if there was any specificity to the individual uses that might be coming in. Mr. Christiansen noted the sign ordinance is comprehensive and is applicable to this use. Mr. Christiansen stated all criteria needs to be met to grant a variance. He reviewed the criteria to be met and was trying to look at a way that it not be self-created, and no practical difficulty. Mr. Christiansen commented he was having difficulty with the fact that he can't meet all of the criteria, and the applicant can't receive special treatment.

Mr. Christiansen suggested the issue be taken out of the hands of the Zoning Board of Appeals and take the elevation and the sign package back to the Planning Commission in accordance with this section of the ordinance, Sec. 35-48(f)(1) and ask them to consider approving internally and limit architectural bans as exists to enhance the appearance of the building for this use specifically. Mr. Christiansen asked staff if this was a possibility and if it were reasonable.

Mr. Bennett noted this board needed to take specific action and then if they wish to, attach to that to say we have informed the petitioner of this phrase in the Planning Commission. Mr. Bennett commented this would enable the petitioner to take an alternate route.

Mr. Christiansen noted he did not want to have to act on this case until the alternative is explored and exhausted. Discussion followed regarding that the Zoning Board of Appeals is a quasi-judicial body that serves to act on variance requests.

Chairperson Buyers asked if Mr. Gushman or Mr. Koncsol had any comments. Mr. Gushman noted the illumination of inside the building. Discussion followed regarding the Shell station on Eight Mile and KFC and covering the neon with vinyl. Chairperson Buyers requested staff to show the connection of this ordinance and the interior, exterior notion. Mr. Gushman referred to the issue of the signage at Walgreens. He noted the Planning Commission could approve it if it was substantially recessed from the front of the building.

Mr. Bennett stated the question is the role of the Zoning Board of Appeals is to deal with specific rules that are presented to the Board. He noted the Planning Commission's role is to look at and to say, "How could this be a variance in order to attract a business or what to do." Mr. Bennett stated the petitioner would have a right to come back before the Board with a specific proposal. Mr. Bennett commented he was reluctant to deal with the "maybes" and push it on down the line. He noted there needed to be a decision so the court could delay action until the Planning Commission made a decision. Mr. Bennett questioned if it is a real hardship for that.

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Mr. Christiansen noted that if this particular use were to come in and the site plan amendment, at the time and showed they want to put tubing in those windows to enhance the appearance of the building that it would have been part of the site plan amendment and could have been acted upon by the Planning Commission. Mr. Christiansen stated he did not have a problem with exploring an alternative.

Mr. Dompierre stated after reviewing the neon issue is out, but there is alternative lighting that can be used to enhance the look of a building. He commented there were 2 separate issues. Discussion followed regarding all avenues be explored.

Mr. Dompierre asked how the corporate office felt about this issue. Mr. Dallo stated they want the neon look as used at their other locations. Mr. Dompierre commented listing of their offerings be added in these windows if they have not exceeded their 10%. Mr. Dallo responded that would be part of stage 2 and he did not want to continue with stage 2 since he had to stop at stage 1. Mr. Dompierre noted Happy's Pizza is lit up very well along Farmington Rd. Mr. Murad commented the window signs couldn't be seen since it is so dark. Mr. Dompierre questioned if the neon perimeter window lighting was to illuminate inside or is it more in appearance to continue with the corporate logo. Mr. Murad responded it is for both.

Motion by Christiansen, supported by Bennett, to table this action on this petition to our next regularly February scheduled meeting to allow the City to seek the opinion of the City Attorney as to the applicability of Sec. 35-48(f)(1), in light of this petition, and if there is an alternative available to the petitioner, and to have that to come back to this body at the February meeting and to amend the motion to include the action of the court, with respect to the current violation continue as requested by staff. Motion carried, all ayes.

Mr. Bennett stated he did not feel the petitioner had met the criteria for a variance, but he wanted to make sure the ordinances are clear and that the Board has provided a good business the opportunity to do what they want to do.

Mr. Christiansen stated the City wants to make sure businesses are viable, strong businesses that they follow ordinances, codes and that criteria has to be followed.

Mr. Bennett noted a motion that he would have made would have been that it be denied, on the basis that the petitioner has not established that the need of the variance was not self-created; it was self-created; secondly, the petitioner has established unique circumstances regarding the subject's property. There were no unique circumstances concerning that property.

Mr. Christiansen noted the issue would only be postponed for a month and he advised the petitioner that he might have to take the neon down.

### ELECTION OF OFFICERS

Motion by Bennett, supported by Majoros, to renew the officers of the Zoning Board of Appeals. Motion carried, all ayes.

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PUBLIC COMMENTS

Mr. Bennett asked the status of the lawsuit regarding the van. Mr. Gushman advised the petition does not have to be withdrawn and the issue expires.

ADJOURNMENT

Motion by Bennett, supported by Majoros, to adjourn the meeting. Motion carried, all ayes.

The meeting adjourned at 8:20 p.m.

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John D. Koncsol, Building Inspector