

BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, May 7, 2008, 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 7:00 p.m.

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

ABSENT: None.

CITY OFFICIALS PRESENT: Building Inspector Koncsol, Recording Secretary Schmidt.

Minutes of Previous Meeting

Motion by Bennett, supported by Majoros, to approve the minutes of the previous meeting of March 5, 2008 and correct the minutes of September 5, to read 2007 instead of 3007. Motion carried, all ayes.

Motion by Buyers, supported by Bennett, to receive and file the minutes of the Planning Commission of February 11, 2008 and March 10, 2008. Motion carried, all ayes.

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

Chairperson Buyers stated Farmington Health Care Center was requesting a variance to Sec. 35-203(b) so that a 3,000-gallon horizontal oxygen tank inside an 8' masonry enclosure can be placed on the southeast portion of the property. He noted the current health care operations are a legal nonconforming use in this R1 District, granting of the variance will expand the nonconforming use of the property.

Holly Kaiser, Architect from Studio 5, reviewed the reasons to upgrade the oxygen system that is currently being used, and install an on demand medical office oxygen to headwalls of each patient bed via exterior storage tank. The centralized system requires placement of a large storage tank and screening wall in the parking/service area of the site. She noted currently the site is zoned R-1 and has been functioning as I-1 since 1966. She stated the change would not affect the capacity of roads, infrastructure or public services. She stated the storage tank would be screened with an 8' high brick and block wall on two sides and metal fencing on the other two sides with a sliding gate to access and fill the oxygen tank.

Ms. Kaiser stated the proposed oxygen storage tank is proposed to sit 50 feet from the existing building and the enclosure wall will be 25 feet from the rear property line. The tank would be near the location of the existing dumpster, compactor, employee picnic

BOARD OF ZONING APPEALS MINUTES -2-
May 7, 2008

table and site storage. She noted the placement of the tank would have the least amount of impact on the site by not reducing available parking spaces, restriping to define as one-way off of Gill Road, a new light fixture, allowing existing landscape areas to remain and not needing to relocate electrical overhead wiring.

Sherrin S. Hood, AICP Senior Planner, LSL Planning, Inc., stated they have met with the applicant and discussed the issues that needed to be addressed, mainly the impact on the neighbors. She noted the Planning Commission may allow reduction of the setback during their review of the site plan, if the Board of Zoning Appeals authorizes the requested extension of the non-conforming use.

She noted the non-conforming status of the site was to be addressed at tonight's meeting and that the applicant is proposing to move certain operations: storage of oxygen from one location on the site to a new location on the site. She commented the applicant meets all of the standards for review and noted the new plan, it is a more appropriate location than the previously proposed location: it is within the existing service area; visual impact similar to the existing; a slight modification to the driveway off Gill Road will make forward movements with delivery vehicles; required number of ambulance runs and fire safety vehicles will be reduced to the site which will reduce noise impact to the neighbors. She noted LSL Planning did not feel the proposed horizontal tank with an 8' brick, screening wall would create additional visual impacts to the neighbors.

Ms. Hood stated LSL Planning, Inc. recommends approval of the requested variance of Section 35-203B, to allow relocation of portions of the non-conforming use to other portions of the property provided the applicant receives site plan approval from the Planning Commission and the reasons are based on the following:

1. Due to the non-conforming condition of this site, it is not reasonable to require use of the site consistent with those permitted in the R1 district.
2. The existing use is unique to the subject property, and the need for the requested variance is not shared by other properties in the same zoning district.
3. The need for the variance is not self-created, but is a result of zoning changes noted in this report.
4. Approval of the variance will not compromise the capacity of public roads, utilities, facilities and services.
5. The proposed use will not alter the character of the neighborhood.

In response to a question by Mayor Knol, Bob Rose explained the process of the oxygen delivery to the site and he noted the process would take approximately 20 minutes and the trucks would exit onto Grand River.

Buyers questioned the noise involved and Mr. Rose responded the delivery would be the same each time and there would be no noise. He stated the truck is in an idle position when filling the tank and delivery can be made whenever to comply with City regulations.

BOARD OF ZONING APPEALS MINUTES -3-
May 7, 2008

Mr. Rose stated they would not use the health care facility as a drop point.

Knol questioned the frequency of ambulances that are called on site presently. Mr. Doug Hay, Respiratory Therapy Director of Farmington Health Care Center, stated there were 105 transports from January 1, 2007 until December 31, 2007 to Botsford Hospital.

Mr. Bennett asked if some of the 911 calls were non-emergency. Mr. Hay responded that 90% of the 911 calls require lights and sirens from the emergency vehicles.

Mr. Buyers questioned the safety of the oxygen tank and Mr. Rose responded the tank is a white vessel and the oxygen is in a liquid cold state. The cryogenic system is a tank within a tank, and the tanks, and alarms, are checked on an annual basis and reports are provided to the facility and local fire department. He noted a technician is 30 minutes away from the facility.

Mr. Christiansen noted the health care center has been operating since 1966 and became non-conforming over time. He asked if the building had expanded over time and Ms. Kaiser replied there have been renovations and brought up to Code, but no expansion.

Mr. Bennett stated the bed capacity has increased twice from 80 to 138 beds and questioned an alteration to the building. Ms. Kaiser responded the increase was from a single patient room to a double patient room and eliminating exam rooms and using that space for patient rooms.

Building Inspector Koncsol stated there was an annex on Gill Road and the patients in these homes were transferred to the main building. Mr. Hay noted in order to make more room for the patients they dropped from 156 beds to 126.

Mr. Christiansen noted the circulation flow of traffic and that the change of flow out to Grand River is significant and will apply to any traffic exiting onto Grand River. He voiced concern regarding the one-way traffic and noted there should be vertical signage at the southeast corner of the building noting the one-way traffic.

Mr. Christiansen questioned if there was an issue with parking space reduction and as far as landscaping they are not taking away anything required in the island. Ms. Hood replied she did not see it as required landscaping.

Mr. Christiansen noted the east and west elevations on the plan and questioned which was correct. Ms. Kaiser replied the correct elevation is the larger on the plan.

Mr. Christiansen noted the site has been a non-conforming use for a period of time and there are limitations; expansion of a non-conforming use, which is indicated in the City's ordinance and is not permitted unless there is an approval granted by the Zoning Board of Appeals. He stated there has to be a basis for the non-conforming use, which was outlined. Mr. Christiansen verified that currently the oxygen provision is in the patient's rooms and the petitioner is looking to consolidate that operation by locating it to the

BOARD OF ZONING APPEALS MINUTES -4-
May 7, 2008

exterior and not in the rooms of the patients. Ms. Hood replied she called it a relocation because the existing service of providing oxygen is already on the site, so they are not expanding the use of the site to provide oxygen. She noted the petitioner is relocating that provision of individual tanks at bedside compared to a bulk oxygen tank. She stated the location of that service is moving from one location to another. Mr. Christiansen replied it is a relocation/consolidation and relocation of the service from the interior to the exterior. He stated he would also consider relocation/consolidation/expansion since the petitioner is adding a structure in order to do that. Ms. Hood stated the site itself, has been considered for this particular use, an expansion of the use entails additional land, in her opinion. She noted it is not appropriate for this not to receive review. She stated she looked at the site in terms of expansion vs. relocation and since it does not include additional land, she is considering it a relocation. Mr. Christiansen noted the word "expansion" is in the ordinance and he stated he could justify relocation, being expansion, because the petitioner wants to relocate this operation and expanding the facilities on the site. Ms. Hood verified that an example of a relocation would be to take something from one building and taking it to another. Discussion followed regarding Sec. 35-203 of the ordinance. Ms. Hood stated regardless of an expansion or relocation, LSL's review would include the same standards and would still look at the site with the same criteria. Mr. Christiansen noted there are standards that have to be met, as outlined in the report from LSL.

Mr. Christiansen verified the basis for the change is technological and the petitioner needs to provide this type of system in order to maintain their business. Mr. Hay stated currently a box at the bedside that can only go up to 5 liters provides oxygen. When a patient becomes acutely ill they need more oxygen and the existing equipment cannot do that. He noted the bulk system allows for suction of the patients and the new system allows for more oxygen and suction. The doctors for better health care treatment can treat the patients. Mr. Christiansen verified the variance would be to provide better health care and not for monetary reasons since the ordinance states it cannot be for monetary reasons. He referred to page 2, item B of LSL's report where the "applicant argues the requested variance is needed to preserve their investment, as failure to upgrade to new technologies will eventually lead to reduced returns." Mr. Christiansen stated he felt that was financial, but noted the petitioner stated the basis for this variance is for better health care service and not for financial reasons.

Mr. Bennett asked the percentage of nursing homes that provide this service. Mr. Hay replied there are 5 buildings in the state that can provide what they do. He noted Grand Blanc is the only facility that provides bulk oxygen presently. Mr. Bennett commented the bulk oxygen would allow them to be a superior service in the area. Mr. Hay replied they would be able to treat the patients who are already at the health care facility to keep them there longer.

Chairperson Buyers asked Mr. Hay to elaborate on services that they provide. Mr. Hay responded they are a nursing home, licensed to take care of life support patients.

BOARD OF ZONING APPEALS MINUTES -5-
May 7, 2008

Mr. Hay stated any deliveries and ambulance traffic already come off of Gill and exit onto Grand River. Mr. Christiansen stated some additional signage be provided at the entrance on Gill Road to show one-way direction.

Chairperson Buyers asked Mr. Christiansen if signage reflecting one-way direction should be incorporated into the motion. Mr. Christiansen replied it affects the overall function of the site and should be a condition in a motion. He noted the Planning Commission would be considering the waiver for setback and the revised site plan.

Mr. Majoros, asked what has changed to make the petitioner change their plan from a vertical tank to a horizontal tank. Ms. Kaiser replied there were 2 meetings and the vertical tank was presented at the first meeting and the second meeting they came back with 2 different versions. She stated the horizontal tank is not a typical tank, is very unique and was pre-engineered for this site. Mr. Rose stated the vertical tank allows for using the least amount of real estate.

Mr. Bennett asked if the chiller pipes were part of the structure. Mr. Koncsol replied since the pipes are small they would be relatively obscure from the site. Ms. Hood stated they did not want to allow a higher wall than 8 ft. Mr. Christiansen viewed the pipes similar to utility lines. Mr. Rose described the chiller pipes.

Mr. Bennett noted no. 3 on the review from LSL, noting "not self created". Mr. Christiansen stated the petitioner is not creating a non-conforming situation since it already is non-conforming. Ms. Hood stated the situation that brings the petitioner before the Board is that the use is not permitted in the district that it is located in. The situation was not created by the applicant, but that is the purpose for them to apply for a variance.

Mr. Bennett stated they have created a situation by adding another structure. Discussion followed regarding non-conforming use.

Chairperson Buyers asked for comments from the audience.

Mr. Kevin Stone, 24016 Earl, asked for clarification of the annual inspection and the maintenance of the system. Mr. Rose reviewed the procedure involved for both of these matters. Mr. Stone verified there were no compressors to keep the system operating. He asked how the tank would feed the facility and Ms. Kaiser replied underneath. Mr. Stone asked the length of installment and Mr. Rose replied close to 3 weeks.

Mr. Stone asked where the ambulances currently pickup patients and Mr. Hay responded they enter from Gill Road to a ramp and exit Grand River. Mr. Stone stated he does not notice the ambulances at the present time, but he will notice the oxygen delivery trucks. Mr. Hay stated the noise from the fill of the tank is less than the noise created by the generator. Discussion followed regarding noise created by the trucks.

Mr. Stone verified the garbage trucks exit onto Grand River and he noted the garbage trucks would be more noticeable to the neighbors. Mr. Stone stated he is getting garbage

BOARD OF ZONING APPEALS MINUTES -6-

May 7, 2008

in his yard, noise pollution, and noted the old fence. He requested the borderline between the applicant and the neighbors be more solid.

Mr. Stone stated he would take a negative position regarding the variance unless there is a condition that the fence be replaced with something more solid. Ms. Hood asked Mr. Stone if he had an objection to workmen on his property to install a wall or fence. Mr. Stone replied he would like to look at a proposal for a wall or fence along the entire site and that it would be higher.

Mr. Christiansen asked how long Mr. Stone has lived in his house and Mr. Stone replied close to 2 ½ years. Mr. Christiansen asked the height of screening between residential areas. Mr. Koncsol replied it could be a minimum of 4 ft. high. Discussion followed regarding screening and the Planning Commission could review the screening. Mr. Hay stated he would address the garbage issue with staff.

Mr. Rose noted if a brick wall is installed the footers could damage the tree roots. Ms. Hood noted new fencing could replace what is currently there as long it is installed to the ground. Mr. Stone requested the height of the fence is measured from the elevation of the parking lot. Mr. Christiansen noted that could be an issue before the Planning Commission.

Chairperson Buyers asked Mr. Hay about an increase in noise due to the trucks using a one-way drive vs. the two-way as present and the noise from the generator. Mr. Hay replied the generator is tested every Monday.

Mr. Stone questioned the safety of the tank. Mr. Rose replied there is a firewall.

Ms. Janice Dahlhofer, 24015 Pickett, noted she would feel the impact of the installation of the tank more than anyone in the neighborhood. She concurred with Mr. Stone regarding garbage and noise from the employees of the health care facility. Ms. Dahlhofer noted there is rarely a doctor at the facility and asked how many are on site during a crisis. Mr. Hay responded a doctor would be called when a patient needs oxygen. She commended the Board for saying "have you outgrown the site"? She stated she did not feel the decision would be made to the advantage of the people.

Chairperson Buyers stated the Board respected her opinions. Discussion followed regarding lighting. Ms. Dahlhofer stated she has lived in her home for 20 years.

Mr. Christiansen stated the Board allows her the opportunity to voice her concerns and he is hopeful that the health care applicants will look into the noise, and garbage issues. He noted this forum would be able to make a change for her concerns. Ms. Dahlhofer described the wall behind her house.

Mr. Albert Vanrenterghen, 24032 Earl, stated he has lived at this location for 30 years and has had issues with the health care facility. He felt the applicant was requesting installation of the oxygen for monetary reasons. Mr. Vanrenterghen noted the dead trees

BOARD OF ZONING APPEALS MINUTES -7-

May 7, 2008

on the site and the mess created by a Mulberry tree. He noted he did not hear the ambulances.

Chairperson Buyers verified no correspondence has been received regarding the variance.

Mr. Bennett noted an ordinance that states there can be no activity on a property from 11:00 p.m until 7:00 a.m. He stated the hours of delivery could be a condition of the motion. Mr. Christiansen asked if there is a violation presently. Mr. Hay stated the time element would only affect employee shift change. Mayor Knol stated deliveries should be Monday through Friday during the day.

Mayor Knol stated she appreciated the attendance of the neighbors and hoped the proponent would address their concerns with management. She noted the Planning Commission would have to address other issues. She stressed that the proponent needs to be a good neighbor. She noted the landscaping needs to be maintained and further noted the garbage issues. Discussion followed regarding the removal of the Mulberry tree.

Mr. Stone asked what the next step would be. Mr. Bennett replied there would be a vote at tonight's meeting. Mr. Christiansen stated the Planning Commission would look at the setback waiver and the site plan and any conditions set by the Zoning Board. He noted it would go back to the City for building permits, fire codes, and he stated there are a lot of steps to be taken.

Discussion followed regarding the final status of the variance.

Mr. Christiansen stated there have been good comments made this evening and the input is important. He discussed being good neighbors.

Motion by Christiansen, supported by Bennett, to approve the requested variance for Section 35-203(b) to allow the relocation and expansion of the non-conforming use that currently exists at the Farmington Health Care Center, for oxygen service to the other portion of the property, as shown on the submitted site plan, based upon the following findings: (1) that due to the non-conforming condition of this site, it is not reasonable to require use of the site consistent with those permitted in the R-1 or Residential District, this being a commercial use, (2) the existing use is unique to the subject property and the need for the requested variance is not shared by other properties in the same zoning district, (3) the need for variance is not self created but is a result of zoning changes noted in the Planning Consultant's staff report, (4) approval of the variance will not compromise the capacity of public roads, utilities, facilities and services for this site and the area, (5) the proposed use will not alter the character of the site and of the neighborhood on the following conditions: that the City Fire Department be consulted for any concerns that they may have related to the outdoor storage of compressed oxygen and if necessary review and approval from the City Fire Marshal; the applicant must satisfy the applicability of any National Fire Protection Agency (NFPA) standards, again, if applicable; that documentation of any and all required permits with respect to this must be submitted to the City for their records; that additional traffic signage, as discussed this

BOARD OF ZONING APPEALS MINUTES -8-

May 7, 2008

evening, be added to the plan, identifying the one way ingress and egress and the one way circulation to be implemented on the site, and those would be vertical or standing signs and the petitioner and staff show this on the site plan; that the petitioner look at the existing screening situation along the south property line as that portion of the east property line adjacent to the home off of Pickett, for its current condition and consider providing a plan to either replace, repair, or more effectively screen that area and show it on the site plan; that the landscaping on the south property line be reviewed for its current viability, if dead, dead plants be removed and replaced as necessary; as coordinated by the City; and that the applicant consider working with the adjacent neighbor directly off of Gill Road, adjacent to the south, to remove the existing Mulberry tree, if mutually agreeable; that truck deliveries, including all truck deliveries, the delivery of oxygen to the site and garbage pickup, be restricted, if not done so already, to normal business hours, Monday through Friday, and subject to the Planning Commission's approval of the setback waiver and the site plan, including the consideration of all the conditions, as part of this motion.

Mr. Bennett stated his vote on this issue tonight has been modified greatly by some of the conditions that have been set. He stated it would not change his interpretation of not-self created.

Mr. Bennett called for a Roll Call vote.

ROLL CALL:

AYES: Buyers, Christiansen, Knol, Majoros, Bennett.

NAYS: None.

Motion carried, all ayes.

PUBLIC COMMENT

There were no public comments.

Chairperson Buyers stated they are trying to satisfy an ordinance that is geared towards the benefit of the community. He thanked everyone for their insight and comments.

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

The meeting adjourned at 9:00 p.m.

John D. Koncsol, Building Inspector