

## BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, March 5, 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 7:03 p.m.

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

ABSENT: None.

CITY OFFICIALS PRESENT: Building Inspector Koncsol, City Attorney Kudla.

Chairperson Buyers noted there was a full board present.

### Minutes of Previous Meetings

Chairperson Buyers gave time to board members who did not receive the previous meeting minutes in their packet to review.

Motion by Majoros, supported by Christiansen, to approve the minutes of the previous meeting of September 5, 2007 as written. Motion carried, all ayes.

Motion by Christiansen, supported by Bennett, to receive and file the Planning Commission minutes of September 10, 2007, October 8, 2007 and January 14, 2008. Motion carried, all ayes.

APPEAL OF: Leo Soave  
Leo Soave Building, Inc.  
20592 Chestnut Cr.  
Livonia, MI 48152

Chairperson Buyers stated Mr. Leo Soave, of Leo Soave Building, Inc., was requesting a variance to Sec. 35-51 (a) so that the ordinance requirement for a dumpster enclosure can be waived for 32025 Grand River, the vacant property at Grand River and Brookdale. He noted the owner is proposing to construct a small office building with an adjoining parking lot.

Mr. John Nagy, Community Planner for Soave Professional Office Building, stated the Site Plan has been prepared for the site and has been designed and developed without a dumpster enclosure. Mr. Nagy noted they believe there are practical limitations that prevent them from providing the dumpster enclosure and also practical limitations to the building to make a trash enclosure of minimum size, required by the Ordinance, that would be practical. He commented the building is relatively small of 3,000 sq. ft., which includes an upper mezzanine area of 600 sq. ft.

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Mr. Nagy reviewed the Site Plan noting there are 1.72 acres in area and is one parcel removed from Brookdale Avenue. The property on the corner is zoned C2 Commercial, as is the existing Dry Cleaner structure and Mr. Nagy noted the vacant property to the bridge over the upper Rouge River. He reviewed the flood plain and wetland areas that he felt the circumferences made the overall site very practical from a development standpoint. He commented the only useable part of the site was the western portion of the property; which represents an area less than a third of the total area of the site. Mr. Nagy explained that in order to make the property useable they have to encroach into a portion of the flood plain, as well, as the wetland area. He stated they have an approved DEQ permit for that development.

He commented the overall width of their area being developed is 66-67 ft. from the west property line. The building is situated to the back portion of the property, which complies with the side yard setback from the west property line 10 ft. and 25 ft. from the rear property line. He pointed out the location of the proposed building and 14 parking spaces on the front of the building, with a single point of egress and ingress from Grand River Avenue as shown on the Site Plan.

Mr. Nagy reviewed the proposed retaining wall, the lower portion of the basement area that would be used for storage, and the proposed landscaping. He noted the useable area of the building would be 2600 sq. ft.

Mr. Nagy noted that the Ordinance requires a dumpster where there is adjoining residential property and the dumpster shall be in the rear yard or interior side yard, the side yard being the furthest from the residential area. He commented there is residential all along the south property line.

He stated that in order to make the property buildable there is great expense involved and from a practical standpoint they need every foot of building area they can get. He commented the building would be strictly office space and there would be no food service and trash would be paper and products of that nature. He stated they felt instead of a dumpster, a better solution would be to have a trash compactor, which would be stored in the basement area, paper would be baled and taken out to the curb on Grand River on trash day to be picked up by the waste hauler. Mr. Nagy noted they have contacted Waste Management and the proponent was told they would be required to have a container no larger than 32 gallons, not heavier than 50 lbs. and they would charge the proponent if there is a fee. He noted the use of trash compactor would be better for the neighborhood than a dumpster.

Mr. Nagy stated the proponent felt the request to waive the use of a dumpster was reasonable and asked the Zoning Board to grant their request to waive the requirement.

Chairperson Buyers thanked Mr. Nagy and asked if there were questions from the Board members for regarding the request.

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Ms. Knol asked where the container would be kept when it was not trash day and Mr. Nagy replied it would be kept in the basement area until trash day.

Mr. Christiansen verified the 32-gallon container would also be kept in the basement. Responding to a question by Mr. Christiansen, Mr. Koncsol stated there are areas on Grand River that have curbside pickup. Mr. Christiansen noted homes that have been converted to commercial properties, which make for quite a mixture on Grand River and that is historical. He further noted it is relatively recent. Mr. Christiansen stated he did not think dumpsters were required in the Central Business District.

Mr. Christiansen verified that the specific request before the Zoning Board was the request to waive the requirement for a dumpster enclosure.

Mr. Majoros asked if there was a patio at the notch shown on the Site Plan at the rear towards the residential area. Mr. Nagy replied there would be a screen wall for the transformer and air conditioner compressor only. Mr. Majoros inquired if there was another solution to keeping the trashcan in the basement. Mr. Nagy replied they would use a smaller compactor.

Mr. Bennett asked Mr. Koncsol if the Board granted the waiver were there any ordinances that address keeping all trash in the basement. Mr. Koncsol asked for an opinion from Attorney Kudla. Ms. Kudla stated the Board could place a condition on the manner of keeping all garbage in the interior of the building and placed out at the corner, at the curb, only on the contracted trash day.

Mr. Majoros inquired if there could be a further condition that if there were a transfer of ownership, at a later date, the Board's decision would be transferred to the new owner. Ms. Kudla replied if there was a change in use it would have to have another Site Plan review and would be considered at that time. If changing a tenant for a similar use the Board could make the condition that it be reviewed at the change of occupancy or put a time limitation to be reviewed again to insure that the trash is being addressed in the way that is satisfactory to the City and in accordance and execution of the ordinance.

Mr. Bennett stated the conditions set would be for the building and not the occupant. Mr. Nagy replied the conditions would be for the property. Mr. Christiansen commented that the Board could set any conditions they feel are reasonable to achieve and to give basis for the variance. He further commented the Board could tie conditions that would be time lined or follow-up scenario, change of occupancy that could be red flagged by Mr. Koncsol when that occurs or when there is a change of function. Mr. Christiansen voiced concern that now the building is to be used as an office, but under the C2 District other uses are permissible which includes retail uses and food uses also. He stated that several years from now the use could change and that needs to be addressed. Ms. Kudla replied the Board could condition that the building be for office use only. Mr. Christiansen stated that if the change would be for something other than office use it would have to be addressed and reviewed by the Board.

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Mr. Nagy stated they could have conditions for office use and the building is designed for office use.

Mr. Bennett asked Mr. Nagy if they have approval from the Road Commission and Mr. Nagy replied they are still waiting for approval. He noted the proponent has to go back to the Planning Commission for Site Plan approval if the Board grants the waiver for the requirement of a dumpster enclosure.

Mr. Christiansen commented the Planning Commission has been reviewing the Site Plan for the property for quite some time and the property is unique and has a lot of constraints. He noted the property is very low and it will require a lot of fill. He further noted the installation of the retaining wall would be a very significant project in terms of engineering and expense.

Mr. Christiansen reviewed the Site Plan issues the Planning Commission has been addressing. He noted it was important that the proponent obtained the DEQ Permit since the building would be encroaching on wetlands and also there is a discharge of spring water into that wetland area. He further noted the importance of approval from MDOT for right-of-way. Mr. Christiansen stated the Planning Commission has not granted approval of the Site Plan since the DEQ, MDOT issue and the issue with the dumpster enclosure need approval. He commented there are still several issues that need to be addressed before Planning Commission approval.

Chairperson Buyers noted letters that had been received: an objection for approval from Art and Christine Cuthbert, 222704 Brookdale ; approval from Wanda Bielski, 32080 Grand River #87; deny applicant and that the property meet all codes and requirements from Ann Margaret, 31831 Grand River #72; objection from Carla D. Aren, 22814 Brookdale; a facsimile objection from George O. Samra, 32300 Grand River; duplicate objection letter and to use strict requirements from James and Carla Aren, 22814 Brookdale; objection letter with no name and address; objection letter from Glen McKeldy, 6865 Collard, Bloomfield Hills, MI; approval from James Madigan, 31831 Grand River #87; and a letter of objection from Ann and Alec Thompson, 22805 Brookdale.

Chairperson Buyers opened the proceedings for public comment regarding the variance waiver.

James Aren, 22814 Brookdale, voiced concern regarding rats, raccoons and other small animals that would be in the area since there would be some food consumption at the office.

He also was concerned about traffic regarding curbside trash pickup on Grand River.

Mr. Aren asked when the ordinance went into effect and Mr. Koncsol replied within the last year or 18 months. Mr. Aren felt since the ordinance was recent it is still a good idea to enforce it. He noted a problem with the Dry cleaner business that papers fly around

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and there is animal traffic in that area since they don't have an enclosure. Mr. Aren requested that the Board not grant a variance to the proposed site. He felt there would be a lot of problems.

Mr. Christiansen asked Mr. Aren the location of his property in regards to the proposed site. Mr. Aren showed his property location on the plan. Chairperson Buyers noted Mr. Ahren's property is adjacent to the property and that there is one house, occupied by Margaret Baker, between him and the proposed use, to the south.

Chairperson Buyers explained to Mr. Aren that the Board has the power to approve or deny the variance and the Board has the power to condition the use.

Mr. Aren requested that the Board deny the variance.

David Sunday, 22720 Brookdale, located on the east side of Brookdale, the 5<sup>th</sup> house from the corner, stated the ordinance was put into effect for a reason and he felt it was adopted in order to keep the City up to code. He stated Farmington is a special place and the ordinance should be enforced.

Mr. Christiansen verified that the Site Plan allowed for the proper amount of parking spaces and 1 barrier free space.

Mr. Christiansen also verified that the proposed modifications include a variance to waive the requirement for a dumpster enclosure for all uses in the C2 District and a modification for front parking to be decided by the Planning Commission. He further verified the proponent was compliant with the building and that all permits must be obtained before the Planning Commission makes a decision.

Mr. Christiansen stated the Zoning Board of Appeals has the responsibility in considering requests for variance, for making a record and to make sure that the petitioner's proposal before the Zoning Board is one that has merit. He noted the petitioner has given basis for that. He noted it is a non-use variance and the petitioner must show there is practical difficulty in order to grant a variance. He stated there are unique circumstances that prevent the petitioner from meeting the requirements of the ordinance. Mr. Christiansen stated decisions by the Board are not made by economics of the petitioner, and he was concerned whether or not there is enough information provided to justify a practical difficulty or circumstance.

Ms. Knol stated the City has been working hard to update the Master Plan to encourage dumpster consolidation and dumpster enclosures.

Ms. Knol also noted the gateway into the City and the look of business sites closer to the street to look like a downtown. She voiced concern regarding curbside trash pickup since the container would be curbside the night before trash pickup.

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Ms. Knol commented the City wants a walkable downtown and sidewalks must be free and clear. She wasn't concerned about the traffic backup, but the issue of the trash containers could cause a potential hazard since the right-of-way is narrow and the container could end up on the sidewalk.

Ms. Kudla asked Mr. Christiansen if he would consider the site setup because of the wetlands and the change in grade a practical difficulty that is limiting the size of the parking lot, as far as placement of any dumpster that would fit. Mr. Christiansen replied he was not asking if there are unique circumstances since he knows there are. He stated he had not heard if the petitioner had presented those unique circumstances and practical difficulties. He wanted to make sure that economics was not the basis for the Zoning Board to grant a variance. He requested that the petitioner review the unique circumstances and practical difficulty in order to achieve the ordinance requirements.

Ms. Kudla asked Chairperson Buyers if the petitioner could present more follow-up.

Chairperson Buyers asked Mr. Nagy to respond to the concerns of Mr. Christiansen as to the practical difficulties and not the economics involved.

Mr. Nagy noted the limitations of the wetland area and showed the location on the Site Plan. He further noted they are encroaching in the flood plain a similar distance. He showed the area that could be obtained in order to receive approval from the DEQ. He stated it represents what the DEQ felt was the more useable portion and it represented a practical amount of site utilization for the property. He commented anything beyond that the DEQ would have had an objection to and that defined the site limits for development purposes. He noted the extreme amount of fill that is needed and the retaining wall that will be built.

Mr. Nagy stated they could go around the west side yard and they could put a dumpster in the side yard. He noted that the new ordinance was trying to consolidate dumpsters and the petitioner would be eliminating the need to have a dumpster. Mr. Nagy commented the amount of trash would be small. He stated there would be landscaping, the noise would be eliminated by not having a truck empty a dumpster and debris would not fly around.

Mr. Bennett stated the Board is not changing the ordinance, but making a waiver exception for one piece of property. He noted the ordinance has been a good ordinance and it has been used. He commented there are a number of businesses in the downtown area that have internal compactors and the trash is only put out at the time of trash pickup. He noted it is not an unusual situation, but the usual situation would be to have a dumpster and enclosure to try to provide control and security.

Mr. Bennett reviewed benefits of having an in building compactor. He realized there are many steps that have to be addressed by the Planning Commission. He noted the container could be put out the night before and pickup would have to be after 7:00 a.m. in order to abide by the noise ordinance.

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Mr. Christiansen asked if there were alternatives and noted a dumpster enclosure would eliminate a parking space and would require a variance for the parking requirements. He noted a dumpster enclosure would have to be placed on the front of the building, in the parking lot, in view of the gateway area to the City. He did not feel comfortable with a dumpster enclosure out in front of the building and asked if there should be concern about pickup on Grand River. He questioned if the trashcans could be put out in the parking lot in front of the building and if Waste Management could drive into the parking lot and avoid pickup on Grand River.

Ms. Knol reiterated her concern about limited walkability with the trashcan placement, flying debris on windy days and the empty receptacle falling onto Grand River.

Mr. Christiansen suggested an alternative that the petitioner have self-contained trash storage and to have it taken off site.

Chairperson Buyers noted problems with bags and trashcans during times of snow accumulation and supported Mayor Knol's concerns.

Mr. Christiansen reviewed the alternatives he had presented.

Mr. Nagy stated the small amount of trash that would be generated could be removed by Mr. Soave and taken to another location.

Chairperson Buyers commented he thought that would be a more viable solution to the problem. He noted if the parking lot was full of cars it would be difficult for a truck to navigate in order to pick up trash near the building and the truck would probably have to back out onto Grand River.

Mr. Christiansen noted there would never be any trash pickup and it would be a big responsibility for the occupant of the building. He further noted the condition would have to be established if there is a change of use.

Mr. Bennett noted this is only one item to be addressed and a decision should be made at this meeting in order for the Planning Commission to continue with the issues they have regarding the proposed site. He stated he is comfortable with in building trash compactor with self-disposal, office use only, with a time for re-evaluation and inspection.

Discussion followed regarding a time line.

Chairperson Buyers asked Mr. Bennett to clarify what would occur during the time line. Mr. Bennett responded that the petitioner was adhering to the conditions of waiver of the ordinance and self contains, self-disposal and office use only.

Ms. Kudla asked Chairperson Buyers if the Board would routinely check it.

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Discussion followed regarding the conditions that would be set.

Motion by Bennett, to grant a waiver to Section 35-51 (a) to Leo Soave, for the property at 32025 Grand River, with these conditions: (1) all waste would be compacted within the building with self-disposal and that the building be limited to office use only.

Mr. Christiansen asked for an amendment to the motion, that the petitioner has established that there are unique circumstances on the property due to the existing conditions on the property, the limited area of the building, and that currently there is a limited amount of parking spaces; there is not an alternative area to provide for a dumpster enclosure and as such practical difficulty meeting compliance with the ordinance requirements. Ms. Kudla commented if the office use changed at a later date the variance would be terminated at that time.

Mr. Bennett stated it would be office use only.

Motion by Bennett, supported by Knol, to grant the variance, as amended, to Section 35-51 (a) for Leo Soave, for the property at 32025 Grand River, because the petitioner has established a practical difficulty, the petitioner has established the compliance with the strict letter of the restriction of the ordinance which would unreasonably prevent the use of the property and would be unreasonably burdensome and then add that the petitioner has established unique circumstances regarding a and b with the conditions: an in building compactor, the condition that all would be self-disposal and that the building be limited to office use only. Motion carried, all ayes.

Chairperson Buyers addressed the public and stated the Board, as a body, had to meet the issues of the petitioner and the concerns of the residents. He stated he felt there were other issues that had to be dealt with by the Planning Commission and the Zoning Board had to deal with the issue of trash only. He felt the Board had accomplished that goal.

Chairperson Buyers asked for public comment regarding other matters, not simply to the issue regarding the waiver of the dumpster enclosure.

Mr. Aren stated he felt there were several people who considered the building as a bad idea. He stated the Board could have stated "no variance".

Mr. Christiansen commented the Board did not want to create another problem. He noted the responsibility of the Board is to hear variance requests to the ordinance and if the petitioner can come in and substantiate and give basis for the waiver it is the responsibility of the Board to make a decision. He stated the Zoning Board has nothing to do with approval of the Site Plan and that the proponent has a tremendous amount of work to do.

Mr. Aren voiced his concerns about a medical office at that location and medical waste.



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Mr. Christiansen explained that further issues have to be addressed by the Planning Commission.

Ms. Knol reiterated that the Zoning Board was not taking economics into consideration. She stated the proponent owns the property and has a right to build on that site as long as he meets the requirements. She noted the Board has a legal right to follow the ordinance requirements by granting a variance if the petitioner has met unique circumstances regarding the site. She noted the petitioner could take the City to court if the Zoning Board of Appeals did not meet their legal requirements to grant the variance due to unique circumstances. She felt the Board came up with a good compromise with the motion that was made.

Ms. Kudla agreed with Mayor Knol's response regarding legal issues.

Mr. Bennett voiced his concern that green space would have to be taken out in order to comply with the ordinance to have a dumpster enclosure and it would be an ugly site.

Ms. Knol stated the Zoning officer would enforce the variance.

Mr. Aren did not like the building on the site.

Discussion followed regarding the issues dealing with the site.

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

The meeting adjourned at 8:30 p.m.

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John D. Koncsol, Building Inspector

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