

**CITY OF WIXOM
ZONING BOARD OF APPEALS MEETING
49045 PONTIAC TRAIL
MONDAY, DECEMBER 11, 2017**

Approved
Jan 8, 2018

The meeting was called to order by Chairman Caplan of the Zoning Board of Appeals at 7:30 p.m. at which time allegiance was pledged to the American flag.

BOARD: Jeff Caplan (Chairman), David Berry, Joe Barts, Michael Schira, Steve Winters, Ray Konchel and Tom Marcucci
ABSENT: Peter Behrmann (Excused)
OTHERS: Carol Maise (on behalf of Carmine Avantini) [CIB Planning] and Nancy Fisher (Recording Secretary)

Determination of a Quorum:

A quorum of the Zoning Board of Appeals was present for this meeting.

Agenda:

No additions or changes were made to the agenda.

Approval of the November 13, 2017 Zoning Board of Appeals Meeting Minutes:

MOTION and seconded by Boardmembers Winters and Barts to approve the November 13, 2017 Zoning Board of Appeals Meeting Minutes. Boardmember Konchel **abstained**.

VOTE:

MOTION CARRIED

Correspondence:

City Manager's Update – November 14, 2017
City Manager's Update – November 28, 2017

Call to the Public:

There were no comments made by the public.

Unfinished Business:

1. **PUBLIC HEARING FOR VARIANCE #005-17: SUHAIL JOHN, 2563 WENONA DRIVE, WIXOM, MI 48383:** The applicant is seeking a variance to allow an encroachment of greater than 10 feet into the required front yard under **Section 187.13.030, subsection A.1, Porches and Decks**, of the Ordinance. The Wixom Municipal Code requires approval of a dimensional variance from the Zoning Board of Appeals when it can be shown that Ordinance standards have been met. The property is zoned R-4, One Family Residential, where single family residential uses are permitted in that district. The parcel number is 17-32-429-001. This case was tabled at the November 13, 2017 meeting due to incorrect notice information.

Chairman Caplan informed the applicants that they would need to obtain a majority vote in order for their request for variance to be granted.

Suhail John, 2563 Wenona Drive, Wixom. Mr. John explained that he had two decks, one of which he tore down since he built a small addition to the home for his wife who is disabled; she cannot use stairs. The other deck is very small. She was using it for exercise since she cannot go outside into the

subdivision. If his wife falls, he has to call 911. He obtained a permit for one of the decks but decided to extend it. The City has a code regarding the distance from the street to the deck which he was unaware of. He begs the City's indulgence.

Bandali Hosari, 35838 Elmira Street, Livonia. He is the applicant's general contractor. He demolished the small deck and made the existing deck larger. He discovered that they needed to make a ramp for the applicant's wife to be able to use the deck since there are three steps. Four (4) feet are required for the existing deck. When he started the work, he discovered that the wood was rotten. He was requested to add the 4 feet at the time of his discovery. It is his fault and the applicant's fault that they did not mention the distance between the street and the deck. The applicant's home is a corner house which is why he did not know whether it was a backyard or a side yard. The applicant would like to keep it small in order to help his wife to use the ramp during the summer.

Chairman Caplan asked Mr. Hosari whether he is a licensed and insured contractor. Mr. Hosari said that he is. He pointed out that the work was started by another contractor. He did pull a permit when he started working on it himself and called the City inspector for the addition. The inspector then asked for the permit and informed him he needed a permit for this wall. The deck was already built at that point although it was not yet complete. Chairman Caplan noted that unfortunately corner lots have two front yards; however, usually this is discovered early in the process in order to avoid issues such as occurred here. He asked what happened to the original deck. The applicant said that there were two decks. There was one when he bought the house and he got a permit from the City for the other. The old deck on the back of the house was a bit big though and he wanted a smaller deck. The small deck (Chief's Lane side) was not enough for his wife however. He lost the big deck when he did his addition.

Boardmember Barts noted that the City inspector determined that the Americans With Disabilities (ADA) ramp was not built to the required Code. Mr. Hosari said that he will fix it if it needs to be corrected. Boardmember Barts noted that the City Planner stated that screening may be required. Will the applicant be willing to do that so that it is less objectionable visually? Mr. Hosari said that he did not have any discussions with the City Planner regarding screening.

Boardmember Marcucci noted that there is a reference of this deck being into the setback. How many feet does it go into the setback? Boardmember Berry said it encroaches 2½ feet beyond what the Ordinance allows. Chairman Caplan confirmed the requested variance is for 2 feet, 6 inches since it is into the setback of the front yard. Boardmember Barts noted that if the deck was built 2½ feet shorter, it would not require landscaping. He noted however that 2½ feet is not going to make it invisible.

Boardmember Konchel noted that Mr. Avantini's November 28, 2017 letter recommends that the Zoning Board of Appeals (ZBA) deny this request for five stated reasons. Chairman Caplan stated that the Boardmembers take the City Planner's recommendation into consideration in arriving at their decision. Boardmember Berry commented that the applicant made a decision to extend the deck for his wife's convenience and her ability to exercise outside her home for health reasons. Boardmember Konchel confirmed with the applicant that it includes the ramp. Chairman Caplan said that it is important to hear the applicant's viewpoint on this as well and that the ZBA needs to figure out whether they will allow the applicant to go 2½ feet into the front yard. All other issues regarding this construction project will ultimately be taken up by the City and the City inspector. The applicant's request is not a request to deviate from the City's construction Code.

Boardmember Marcucci noted that the other option is for the applicant to decrease the deck by 2½ feet and the applicant would still have to fix the handicap ramp to bring it up to Code. Chairman Caplan commented that tonight the ZBA is considering whether to give the applicant relief for the requested 2½

feet. Boardmember Marcucci observed that none of the applicant's neighbors are present in person to protest the request.

Ms. Maise noted that the variance is for a projection into the front yard. She pointed this out on the colored photos contained within the Boardmembers' meeting packets. She stated that since the inspector has not inspected the deck they are uncertain as to whether it is in compliance. She referred the Boardmembers to the second paragraph in Mr. Avantini's November 28, 2017 letter and noted that anything that does not meet Code cannot be approved. She explained that the report along with any information which comes out in tonight's record, can be used to make a decision. The Board should ask if the deck needs to be 2½ feet wider to accommodate the applicant's wife's disability? If it is shortened by 2½ feet, does it compromise the circulation into and out of the house and the applicant's wife's use of the ramp?

Chairman Caplan asked the applicant whether it would hamper his wife's use if it is shortened. Mr. Hosari noted that the ramp comes from the driveway. Ms. Maise confirmed that the ramp is between the garage and driveway coming in the house. Mr. Hosari said that it will be very close to the ramp and it would be a very tight turn for the applicant's wife to navigate in her wheelchair. She needs more room. Chairman Caplan noted that the ZBA needs to follow certain criteria and that the applicant must demonstrate that there is a hardship and it is not just based on the ZBA Boardmembers' personal opinions. There are also other criteria besides hardship including the appearance of the neighborhood. Also, is the applicant's practical difficulty self-created? Mr. Hosari said that if he has to correct the ramp, he would have 12 feet. He now has 13 feet for the deck. If he corrects it, the deck will be 10 feet, 6 inches in order to stay within the Ordinance. It is possible the setback was not mentioned when building commenced. He tried his best to fix it and make it per Code.

Boardmember Berry noted that when the ZBA was previously granting a lot of decks on the front of houses so the Planning Commission was asked to reword the Zoning Ordinance in order to allow for an encroachment of 10 feet. In this case, the applicant is asking for 2½ feet beyond the 10 feet currently allowed. He understands that the additional space would be an advantage to the applicant's wife for purposes of her overall health. He believes that the deck being brought into conformance with the Code can be addressed in any motion made by the Boardmembers tonight. He does not have a problem allowing the extra 2½ feet since it is an odd shaped lot with two frontages; it will allow the applicant to use his property. The hardship is an odd shaped lot and two front yards.

Boardmember Barts agrees with Boardmember Berry regarding the practical difficulty associated with the use of the applicant's corner lot. However, he did not realize that the zoning was changed to allow the 10 feet encroachment. He was sympathetic to the applicant's plea; however, if a permit was applied for, it would have been determined that it projected beyond the distance allowed and therefore this seems self-created. Boardmember Berry responded that this problem was created by a previous builder and related to how the deck and ramp were originally constructed. Chairman Caplan noted that the ZBA can slap the applicant's hands for not pulling a permit. How would they look at it otherwise? However, the ZBA is here to grant relief where possible. If the ZBA allows the applicant's request, does it require the applicant add plantings in order to screen the deck? A lot of people do things without permits; however, it gets them into trouble.

Mr. Hosari noted that he tried to do something but he came into the process late. The applicant has agreed to remedy the situation however the City wanted him to.

Boardmember Winters noted that he is having difficulty with the fact that it is on the ramp side. Chairman Caplan said that it is 35 feet.

MOTION and second by Boardmembers Berry and Winters to approve ZBA Variance #005-17: Suhail John’s request for a 2½ feet variance from the 10 feet permitted by the Ordinance with the stipulation that the ramp is brought up to Code, that the remainder of the deck is inspected and approved by the City’s Building Department contingent upon the design plans to be found in compliance and issuance of a permit for the continued construction of the deck, as per approval by the Building Department. Additionally, a determination regarding arborvitae screening for the deck will be made by the City’s Building Department; the hardship being a non-conforming lot with two front yards and the applicant’s need to provide space for his wife to exercise and feel safe outside her home.

ROLL CALL VOTE

Yays: Caplan, Barts, Berry, Marcucci and Winters
Nays: Konchel and Schira
Absent: Behrmann

MOTION CARRIED

New Business:

1. **PUBLIC HEARING FOR VARIANCE #009-17: VERIZON WIRELESS, 51150 W. PONTIAC TRAIL, WIXOM, MI 48393:** The applicant is seeking a variance to keep an existing galvanized chain link fence around their communications tower when a black vinyl-coated chain link fence is required under **Section 18.12.110.E(2)**, design standards applicable to all facilities, of the Ordinance. The Wixom Municipal Code requires approval of a dimensional variance from the Zoning Board of Appeals when it can be shown that Ordinance standards have been met. The property is zoned M-1, Industrial, where wireless communications towers are permitted by Special Land Use and City Council approval in that district. The parcel number is 17-31-351-015.

Rob Lobell, Verizon, 38310 Northwestern Highway, Southfield. He noted that although the City’s records indicate Telesite, Inc., as the property owner, the application was made on behalf of Verizon. David Anton, of Telesite, Inc., is also present tonight to answer any questions or address concerns. This situation arose as a result of an inadvertent mistake. The application mentions a black-coated vinyl fence which was also mentioned in meeting minutes. Normally, the applicant’s surveyor would then develop a site plan based on their review of the minutes, the Ordinance and the application. In all three cases, the site plan says “proposed 6-foot high chain link fence with strands of barbed wire”. Unfortunately, this was missed by everyone including the City’s Building Department. There was no intent to avoid the black vinyl-coated fence, it was just missed on the plans. He is seeking a variance for several reasons. There is little or no benefit to now installing a black-coated vinyl fence although the Planner said that it would make it more attractive if it was visible. He showed color photos of the area in question to the Boardmembers and noted the tower is behind the building. The fence is behind that building. The base of the tower cannot be seen where the fence would be. This area is zoned Manufacturing which makes it less important than in a Commercial District. There is an existing chain link fence which is not vinyl coated. Both the properties to the east and the west have this same chain link fence. The black vinyl-coated fence is not practical since there is no visibility of this site. The site plan notes the 3-foot strand of barbed wire which obviously cannot be vinyl coated. The barbed wire is required by the Department of Homeland Security. The pole has anti-climbing devices. Placing vinyl coating on barbed wire is very difficult. What they are requesting is consistent with the area since the existing fences are not black vinyl coated. There have been no complaints about the site or the fencing during its 2 years of operation. The applicant can make certain accommodations; for example, it can be spray painted black or they can post a bond to paint it if it rusts. He thinks this is very appropriate due to the difficulties involved with new installation since it would have to be completely ripped out and reinstalled otherwise. Considering whether this is self-created gets at the applicant’s intent and not whether a mistake was made as occurred here. The applicant is trying to correct the mistake.

David Anton, Telesite, Inc., 1015 Southfield Drive, Novi. Mr. Anton explained that everyone missed this including the City’s Building Department and his internal personnel. It is a good looking compound and everything is brand new. It is constantly visited by maintenance personnel to ensure it remains in good condition. It sits about 1,000 feet back from the street and cannot be readily seen. The grass grows really tall during the summer, spring and fall, further obscuring its visibility.

Chairman Caplan asked Mr. Lobell how long the facility has been there. Mr. Lobell said almost 2 years; it was built in the spring of 2016. It is a 50 foot by 70 foot compound with 240 linear feet of fencing. Chairman Caplan suggested that the Boardmembers may want to limit any variance granted to be for this fence and not on any replacement fences. Mr. Lobell said that he would accept that. He can even put trees around it if necessary although that might be odd in this type of industrial setting. He noted that for security reasons, the fencing has to be pretty hefty including its gauge. If they are required to tear out the existing fence, it will involve subsurface excavation which can become costly. Boardmember Winters suggested spraying it with a black vinyl spray paint. Chairman Caplan noted that it will only chip off over time. Boardmember Schira noted that it will look worse if it is painted. Mr. Lobell said that the advantage of the galvanized steel is that it matches Michigan’s grey skies. Boardmember Berry asked whether the applicant has any other installations in the City. Mr. Lobell said probably but he does not know the exact locations. Boardmember Berry asked who the applicant leases the property from. Mr. Lobell said it is Hallmark Tool & Die. It is always a lease arrangement with a separate entity. The lessee only gets a say in the size but not regarding the installation’s construction. However, the lessee does not have approval over the site plan. Boardmember Konchel confirmed with Mr. Lobell that the property depicted in the photos is that of Hallmark Tool & Die. The applicant noted that it is about 1,700 feet from Pontiac Trail and is barely visible from the road. The Planning Department only discovered the issue with the fencing when they did their final inspection and approval.

Boardmember Berry asked whether with the M-1 Light Industrial, if the lot next door is planned to be developed. Ms. Maise said she is not aware of any development plans for this property at this time since she hasn’t seen a site plan submitted but she will verify. The applicant noted that the property next to it on the west and the east are already developed with Light Industrial. Mr. Anton noted that they are storing a lot of things back there.

Chairman Caplan has seen vinyl coating crack. Boardmember Marcucci said that he has no problem with the applicant’s request.

MOTION and second by Boardmembers Schira and Konchel to approve Variance #009-17: Verizon Wireless’ request for a variance for the already installed galvanized fence as is, as opposed to the required black vinyl-coated fence since the applicant’s hardship was not self-created.

VOTE:

MOTION CARRIED

2. APPROVAL OF 2018 ZBA MEETING DATES

Chairman Caplan noted that the 2018 meeting dates are as published in the Boardmembers’ meeting packets. He drew the Boardmembers’ attention to the fact that the November meeting was moved from Monday night to Wednesday due to the regular meeting date falling on a holiday (Veterans’ Day).

MOTION and second by Boardmembers Konchel and Winters to approve the 2018 ZBA meeting dates as published.

VOTE:

MOTION CARRIED

Call to the Public:

There were no comments made by the public.

Staff Comments:

There were no comments made by the staff.

Board Comments:

Boardmember Winters wondered about the Americans With Disabilities (ADA) applicability to the first of tonight's cases (Case #005-17, Suhail John). Chairman Caplan does not know whether it is an issue and thinks that the Board did the right thing. He does not believe 2½ feet will hurt the look of the neighborhood. Boardmember Barts said that he was unsure about the wheelchair turning radius but does not know if ADA applies to private property. Boardmember Schira noted that the risk is that you are encouraging people to forego the application process. Ms. Maise noted that Mr. Avantini talked to the attorney and the applicant has a right to present their case base on their disability.

Boardmember Barts noted that if screening is required for the cell tower (Case #009-17, Verizon/Telesite), it will be more difficult to see people trespassing there or attempting to interfere with it. When someone like Verizon puts up a facility, when does the City approve it? Ms. Maise said that is usually done during the final inspection. However, cell tower facilities in general are known for not calling in for their final inspection. Boardmember Schira noted that there are so many people involved it is easy for it to fall through the cracks.

Adjournment:

This meeting of the Zoning Board of Appeals was motioned and adjourned at 8:39 p.m.

Nancy Fisher
Recording Secretary