

BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, June 3, 2009, 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

PRESENT: Buyers, Christiansen, Dompierre, Kmetzo, Knol.

ABSENT: Bennett, Majoros.

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

MINUTES OF PREVIOUS MEETINGS

Motion by Knol, supported by Christiansen, to approve the minutes of the previous meeting of April 1, 2009. Motion carried, all ayes.

Motion by Christiansen, supported by Dompierre, to receive and file the minutes of the Planning Commission meetings of March 9, 2009 and April 13, 2009. Motion carried, all ayes.

APPEAL OF: Chip and Julie Staley
21028 Larkspur
Farmington, MI 48336

Chairperson Buyers stated Mr. and Mrs. Staley were requesting a variance to Sec. 35-36(a)(3) so that a 10' long, 7'10" high box van as licensed by the Secretary of State can be parked in the driveway or in the street. City code limits the height of commercial vehicles to 7'; therefore, a 10" height variance is required.

Mr. Staley explained he has a mobile disc jockey business and has 7 sound systems that are moved to different areas. He noted the systems are digital and the software needs to be updated in their home. He commented the truck does not have ladder racks or advertising on the vehicle and is not at their home most of the day and not there most of the time. Mr. Staley compared photographs of a Ford Econoline van and his Toyota box van showing his van is taller, but narrower.

Mrs. Staley stated the truck is essential to run their business and they have had the truck for 3 years. She noted they were not aware they were in violation of the ordinance. She commented the truck is not causing an obstruction.

Mr. Dompierre questioned if the height of the van is critical to the transporting of equipment. Mr. Staley replied if the roof of the truck were lower he would not be able to transport 6 systems.

Ms. Kmetzo asked if the cab was custom made for the truck. Mr. Staley responded it is an old U-Haul truck and the cab was part of the vehicle when he purchased it.

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In response to a question by Mr. Christiansen, Mr. Koncsol responded an anonymous letter was received complaining against commercial vehicles in the proponent's subdivision. Mr. Koncsol advised they monitored the neighborhood to see if commercial vehicles were there for delivery or on a casual basis.

Mr. Christiansen stated the vehicle meets the requirements for commercial vehicle parking and storage in a residential district, except for the height. He verified the Staleys have had the vehicle for 3 years and have been parking it in their driveway or in front of their house. Christiansen verified Mr. Staley would be willing to condition any approval upon parking in the driveway. Mr. Christiansen voiced concern trying to make sure there is a basis established in respect to the proponent's request, but he explained the Zoning Board has to make sure whatever action is taken in the affirmative way with respect to a variance being requested, that there is a record made and they have to have a basis to do that. He noted the Staleys had submitted items that are required to be filed under Section 7. Criteria for a DIMENSIONAL (Area) Variance. Christiansen asked Mr. Staley to address his reasons for the Board to grant the requested variance.

Mr. Staley commented the variance is not for a permanent structure, but for a vehicle that is less than a foot in height and moves. Mrs. Staley commented the equipment is essential in order to run their business. She stated they could not keep the vehicle secure if parked at another location and they have to move the equipment in and out of the house in order to update the computer systems on a weekly basis and for repairs.

Mr. Christiansen asked if the proponent had any alternatives and if the truck could be downsized. Mr. Staley commented that due to the rollup door in the back the height of the truck could not be lowered and the capacity of the truck would be reduced. Mrs. Staley noted their other vehicle is used to transport their children and if it were used it would only hold 2 pieces of equipment with the seats removed. She noted they would have to make several trips to transport the equipment if using their other vehicle.

Mr. Christiansen verified, for the record, the proponent had listed their reasons why they felt they had "Practical Difficulties" regarding the ordinance. He noted they indicated the problem was "Not Self-Created". Christiansen voiced concern regarding how variances work. He stated variances run with the property in question; and therefore, must specifically address this situation. Once the vehicle is no longer used the variance would end. He noted conditions and criteria need to be met. He commented the proponent had stated there were no alternatives. He noted there might be other cases similar to the proponent's in the future.

Mayor Knol stated in preparation for this meeting she wanted to compare Farmington's ordinance with neighboring communities to see if our ordinance was in line with other communities. She commented the Board was not there to discuss the ordinance, but to follow the law unless an actual hardship or difficulty can be shown. The difficulty cannot just be financial. She noted that is not the criteria the Board is allowed to follow. She commented most of the other communities did not allow commercial trucks unless they were in a garage and if parked outside they cannot exceed a ¾ ton capacity and some communities had a gross vehicle weight of 6,000 lbs. and others had a net weight of 5,000 lbs. She noted the other ordinances were very similar to Farmington's, but were based on weight versus Farmington's ordinance based on height and other criteria. She

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questioned the intent of the ordinance and why the language was slightly different from other communities.

Mr. Gushman replied the intent was to prevent commercial vehicles from being in public view and ambiguities regarding weight.

Knol stated it does impact the neighborhood and where do you draw the line. She noted the financial difficulties, but the ordinance does not allow the Board to take that into consideration. She commented the Board couldn't consider financial difficulties.

Mr. Staley stated he needed to bring his equipment home in order to update and repair it. Knol noted there are secure, gated storage facilities with cameras nearby. She asked if their other vehicle could be used to transport to a storage facility or leave the truck at the home for an hour to update. Mrs. Staley replied they use the other vehicle to transport their children. In response to a question by Knol, Mr. Staley responded the vehicle in the backyard has no roof or doors. Discussion followed regarding parking the vehicle in the back yard.

Buyers asked the proponent if he had considered another van to hold his equipment. Mr. Staley replied Dodge makes a Sprinter van that is 8'6" tall. He commented they used to have a trailer, but they ran out of room for their equipment in the trailer.

Buyers asked what the requirements and restrictions are on trailers. Koncsol replied the requirements are very similar since they are put in the same category as RV's with a width of 8' and 32' in length. He commented that would be in the Class A motor home category. They need to be stored behind the building.

Buyers asked if there is a time element in the ordinance if the proponent were to leave his vehicle on site for a short period of time to update equipment and then return the vehicle to a storage unit. Koncsol replied there is not and he noted the courts have not supported a violation if a commercial vehicle is parked at their residence for the driver to have lunch. He stated the interpretation of the court is that commercial vehicles should not be at a residence later in the evening, overnight, weekends or for extended periods.

Dompierre asked how often the proponent worked on the equipment. Mr. Staley replied at least once a week and if all of the systems needed to be updated it would take several days.

Knol verified the equipment is taken into the house for repairs and she asked how long the process of updating would take. Mr. Staley responded updating the software takes 14 hours.

Knol discussed the possibility of repairing the equipment and then return the vehicle to secure storage after equipment repairs are completed. Mr. Staley stated the truck is gone most of the time during the day and when he is working in the evening.

Kmetzo asked why the ordinance requirement only allows 7 ft. Mr. Koncsol responded due to past experiences.

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Buyers stated the Board is charged with upholding the ordinance and if appropriate making exceptions. He stated he had a problem with the relationship harmoniously with surrounding uses. He noted the van looks like a commercial vehicle and that it is since it was purchased from U-Haul.

Chairperson Buyers stated the height is a relative requirement and the proponent is in violation barring a variance by the Board.

Buyers asked for comment from the public.

Terry Pope, 33112 Kirby, stated he was in support of the Staley's request. He commented Mr. Staley needed the vehicle for his livelihood and is a good neighbor. He understood rules needed to be followed, but he knew each item is handled case by case.

Debra Ferguson, 20950 Larkspur, stated there is a commercial vehicle two doors down from her residence and that it is larger than the requested variance from the proponent. She commented she was not sure if there was a variance for that vehicle. She stated she did not object to a variance for the Staley's.

Chairperson Buyers noted letters had been received from:

Gerald & Marilyn Stankovich, 21057 Robinwood, - approval of petition

Arnold Campbell, 21080 Birchwood, - objection to the petition

Hane Mirashi, 21016 Larkspur, - approval of petition

Anonymous letter, no address – objection to petition

David Tranchida, 33138 Kirby, - objection to petition

Kim & David Jaske, 20962 Larkspur, - objection to petition

Mr. Koncsol stated he is aware of the vehicle that was mentioned by Debra Ferguson and noted he had contacted the owner and mentioned he was subject to the same requirements as the Staley's. Koncsol noted the owner of the other vehicle informed him he has off site parking for his vehicle. He commented the vehicle could be at the residence for a short period of time, but not on an extended basis or overnight. Ms. Ferguson responded the vehicle is at the residence most of the time, but noted they have a longer driveway. Mr. Koncsol stated he would keep an eye on the situation.

Knol verified the owner of the noted commercial vehicle had not received a variance, has not been approved, off site storage will be obtained and Mr. Koncsol will keep an eye on the situation and asked Ms. Ferguson to inform Mr. Koncsol if the vehicle is at his residence overnight.

Motion by Knol, supported by Dompierre, concerning the appeal of Chip and Julie Staley, 21028 Larkspur, that the request for variance to Sec. 35-36(a)(3) so that a 10' long, 7' 10" high box van can be parked in the driveway be denied on the basis that a practical difficulty has not sufficiently been demonstrated, based on potential other options of available, gated, secured, with cameras, off site storage for this type of commercial vehicles.

Christiansen requested a roll call vote:

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AYES: Buyers, Christiansen, Dompierre, Knol.
NAYS: Kmetzo.
ABSTENTIONS: None.

There being 4 votes in support of the motion to deny the variance.

Chairperson Buyers stated the request was denied.

Mr. Staley verified that if the vehicle did not exceed 7' the vehicle would be acceptable in the neighborhood. Buyers replied according to the ordinance the only item on the docket for the meeting was the height of the vehicle.

PUBLIC COMMENT

There were no public comments.

ADJOURNMENT

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

The meeting adjourned at 8:00 p.m.

John D. Koncsol, Building Inspector

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