

CITY OF SYLVAN LAKE  
ZONING BOARD OF APPEALS  
OCTOBER 1, 2014

A Meeting of the Zoning Board of Appeals was held on Wednesday, October 1, 2014, opening at 6:34 p.m. at the Sylvan Lake Community Center, 2456 Pontiac Drive, with Chairman Galacz presiding.

Present: Harrop, MacGillis, Menuck, Ash, Galacz  
Absent: None  
Also Present: City Manager Martin, Clerk Dryden and Attorney Dovre

APPROVAL OF AGENDA

Chairman Galacz suggested changing the two variance requests around, hearing 1429 Oakwood first and then 2615 Orchard Lake Road.

Moved by MacGillis, seconded Menuck, to approve the Zoning Board of Appeals Agenda for October 1, 2014, as amended.

Yes: All  
No: None

MOTION CARRIED

VARIANCE REQUEST                      **Z-003-14**

Property: 1429 Oakwood      Parcel: 13-36-479-007  
Petitioner: Andy & Lisa Wold  
Zoning Ordinance Sections: 78-297(a)(j) Maximum Lot Coverage

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant a variance from the zoning ordinance to allow the construction of a deck on the rear of the house at 1429 Oakwood. The petitioner constructed a new home on the property that covered 31.2% of the property (35% allowed). The petitioner is now seeking approval to construct a deck that will exceed the maximum allowable lot coverage.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Galacz opened the hearing. Proof of mailings and required proof of application are in the file.

Martin reviewed, the new home was constructed in 2012/13. A variance was granted in September of 2012 to reverse the side yard setbacks so the new home would fit with the

layout of the other homes on the street. The total lot coverage of the proposed deck with the existing house would be approximately 37% of the total lot area, requiring a variance for the maximum total lot coverage of 2% (approximately 122 square feet).

Martin stated there have been a number of requests recently for decks and patios to exceed the maximum allowable lot coverage.

Petitioner Andy Wold stated there was a mistake on their part. When the building plan was given to them they didn't think there would be a reason why they couldn't do a couple steps out the house onto a patio. When the house was built, it was four feet off the ground so now 6-7 steps are needed. They want to build a deck level to the house and the steps will be off to the right.

MacGillis questioned if he put steps going down from the door if he would go over the coverage. Wold stated he needed some kind of a platform because there is a corner door besides the back door and this causes the problem.

Menuck asked if the stairs are the problem causing the variance. Martin explained the steps have to be X feet wide to access all the doors, which causes him to go over the coverage allowed. The petitioner can build a patio pretty close to the size of the deck, but the steps from the house to the patio will still take him over. Menuck asked if he has calculated how much he would have to reduce to come within the required coverage. Martin stated it is the amount of the steps.

Galacz opened the hearing to the public. There were no comments.

Menuck asked Wold what changed his mind from building a patio. Wold likes a patio better, but needs two set of steps because of the doors. He is not sure how to do it safely and with the second door.

Menuck inquired if the building plan showed a lower house. Martin stated it did. Menuck stated it was not self-created then.

Ash would like to see the deck narrower and within the maximum coverage. MacGillis suggested having the deck built to be within the maximum coverage required and giving the variance for the steps up to 7 feet wide. Martin recommended they approve X square feet for the steps. He believes a 12' X 20' deck would be within the allowable maximum coverage.

Moved by Menuck, seconded by Ash, to grant the petitioner at 1429 Oakwood, up to 40 square feet to be used for stairs to get from his deck to his yard should he choose to build a deck. The petitioner has shown a practical difficulty that was not self-created-the house being built higher above grade than the build plan showed.

Yes: MacGillis, Menuck, Ash, Galacz, Harrop  
No: None

MOTION CARRIED

VARIANCE REQUEST

**Z-003-14**

Property:	2615 Orchard Lake Road
Parcel:	18-01-330-020
Petitioner:	Paul Tarnas-Vision's Optical
Zoning Ordinance Sections:	78-142, 78-87(1)(2), 78-88c

Appeal from Zoning Administrator's Determination that Site Plan Review is Required  
If Appeal is Denied, Dimensional Variances from Specific Ordinance Requirement Relating to Sidewalks, Landscaping, Plantings, Parking, Access and Right-of-Way Improvements as Listed in the Public Hearing Notice

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant two variances from the zoning ordinance to render an interpretation of the zoning ordinance to allow a new business to open at 2615 Orchard Lake. To open a new business without being required to follow the site plan review process. This property is located in the C1-Neighborhood Commercial District.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Galacz opened the hearing. Proof of mailings and required proof of application are on file.

Martin explained this is a very old and small piece of property. It was used by a Chiropractor for many years. The property changed hands a few times and then in 2008 Paul Tarnas purchased it. The assumption Tarnas made because it was a doctor's office that he could just move in as an Optometrist and retail space. Martin's interpretation was prior use was a Chiropractor, very small business with a lot of storage in the back of the building. Now with the doctor's office which is quite small, the majority of the space is going to be retail. Martin referred to the documents provided to the

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Board, which shows Martin and Tarnas met many times; this was during the Tim Horton's project too. They tried to work with all three property owners to get some combined shared access with the drive in the middle. It has been going on for a number of years, longer than it should have. The new owner and his legal representation met with Martin a couple years ago to discuss ways to make this work, one of which was Martin's belief that a site plan could be approved administratively without being required to go through site plan review at the Planning Commission. Martin clarified he is now able to do administrative site plan review, which doesn't need Planning Commission's approval. They got really close, but something happened and now the petitioner is here asking for this review.

Martin further explained the first request is, does the Board feel Martin's interpretation of the change of use, which will need a site plan review, correct. The goals of site plans are to get improvements to the property, how it works with the Master Plan, pedestrian access-sidewalk, safety, green space and parking-is there enough.

Petitioner, Paul Tarnas agreed this has been going on a few years since the process had started. After a couple years he did hire Tom Ryan as his attorney.

Attorney Tom Ryan stated this has been in the works since December 2008 when the zoning changed from I-1 to C-1, which Martin took to Planning Commission and then would allow the Vision's Optical to relocate across the street to that location. He noted Martin has been great to work with. They just see things differently. Their interpretation is that the zoning has not changed the use. Going from Chiropractic medical to Optometric medical is not a change of use. Mr. Tarnas has conducted business in the city for 20+ years. They believe the zoning ordinance in question is being applied erroneously by the Zoning Administrator because they are not expanding the structural nature of the building. They are not changing the use because the Chiropractor that was there for many years was for medical use and Optometric is a medical use as well. The Chiropractor sold and rented things, i.e., walkers, canes, splints, etc. Vision's sells glass wear-glasses, sunglasses, contact lenses, etc. The C-1 zoning allows medical offices. The parking they are providing now on their site plan is 12 spaces. It meets the zoning ordinance. They have had an issue with access to the westerly property which is one of the reasons it is taking so long, but they still have access, ingress and egress from Orchard Lake Road. They don't believe there is a change of use shown. It was medical and they will continue the medical use there without having to go through site plan.

Paul Tarnas explained he has been in business for 35 years. He has a doctor on staff. When he bought the building Martin and Tarnas had discussed a change of use. At that time Martin told him it shouldn't be a problem. At some point Martin's view changed, Tarnas said. The medical goods he does sell is 90% of the business which is tax free according to the government. The other 10% is for glass cases and solutions, retail that

is taxed; this may only be 5% of the business. He shared he has done a substantial amount of work on this building. He cleaned up the outside of the building, power washing, sand blasting, reroofing, new windows, 6" insulation through the whole building, GEO-Thermal heating and cooling. He is "LEEDS" approved. He hasn't gone through with this because it still has to have city approval. He would like to get this done to save money with Consumers. Eventually he would like to be able to do solar and wind, but that is down the road.

Ash asked Martin about the provision in the ordinance and the property being vacant for six months. Martin explained under the ordinance definition of "Change of Use", after a 6 month period of vacancy, any use is considered a "change of use". Also more importantly, they didn't make their appeal request within 30 days of the date of being told he had to have a site plan.

Ash is baffled with Vision's over the six years. Tarnas was ok with doing the site plan, being close to done and then backing away. Tarnas explained the west property owner would not guarantee access he needed. He will allow him and his patients to drive on the property, but will not give an easement in perpetuity. Attorney Ryan added, they narrowed it down to egress only and use as an exit only, but Darryl Toby would not sign the agreement. Back in 2008 it was always intended to be used as a medical facility. There was never a vacancy; the intent was there. Tarnas addressed a discussion with Martin regarding the Master Plan and having to have green space and sidewalk. He would lose too much parking to survive in that building. He would lose the six parking spaces in the front of the building.

Menuck asked about the change in zoning. Martin stated the zoning was changed to actually allow him to go in and be a conforming use because the Chiropractor was an existing non-conforming use. The other side of that is, if it was a legal non-conforming use and not a change of use, it would still be allowed. Martin continued, back in 2008 the city did get a conceptual site plan that he sent to McKenna. McKenna did a review on it in November 2008. According to the ordinance they have to have an agreement for cross access onto another private property and this is what Tarnas is having an issue in getting. Tarnas shared, Darryl Toby told him as long as Tarnas insures the people on his property he was allowed to do. So for the last four years, even though no patients have been coming to that office, Tarnas has insurance on Toby's property.

Galacz has a problem with the fact that all along Tarnas has been submitting site plans since 2008. He asked why he is appealing now. Tarnas stated at the beginning he was told he didn't have to do all that work. He was told, by Martin, before he bought the building it was an executive decision and there wouldn't be a problem.

MacGillis referred to a letter from Martin to Tarnas stating he could do the updates, but

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would need site plan approval. Martin corrected, he never said it did not require site plan approval. He said hopefully it wouldn't need to go before Planning Commission for approval and it doesn't. Martin stated Tarnas and he didn't talk before he bought the property. Tarnas stated they did. Martin stated he doesn't recall it. Another problem was the front of the building was Dr. Donner's Chiropractic business. The back was storage, which wasn't Dr. Donner's.

Attorney Dovre explained the term "change of use" is defined in the zoning ordinance, which Martin provided for the Board. It says occupancy by the same permitted use of a building or site if it has been unoccupied for a period of six months is also a change of use. From Martin's communications the building was vacated back in early 2008. It is Dovre's opinion this does support Martin's determination there is a change of use and a site plan is required. Menuck asked when the six months would have been for vacancy of the property. Was he stopped from using the building within those six month or was he not even prepared to do anything with the building. Attorney Dovre stated the facts presented by Mr. Martin was that Mr. Tarnas purchased the building in August 2008, which would be eight months after the Chiropractor closed. Tarnas argued that is incorrect and stated the landlord is present to verify it.

Galacz opened the meeting to the public for comment.

Cindy Forcier, 2495 Orchard Lake Road, explained Dr. Doner leased the building from her father. He got very ill and his wife needed a couple of months to clean out the building. It wasn't vacant for very long. She doesn't believe it was six month because Mr. Doner was still paying rent. Tarnas added he approach Forcier about buying the building three weeks after Dr. Doner stopped practice.

Karla Richey shared she and her family have been going to Vision's Optical for many years. She appreciates having a business like Tarnas' in Sylvan Lake and would like to see him move in there. Galacz assured her they would all like to see Tarnas move in.

Jim Schachern has been a patient back when he was in Keego Harbor. He only went to him for medical purposes, medical devices are glasses. He feels the discussion of change of use is ridiculous.

Mike Haag has been a patient of Vision's for 20 plus years. He feels it is unfortunate they are still having conversations on making use of the building. He would like to see him move in.

Robert Batchik is confused by the discussion of storage. The Chiropractor had storage; Home Depot has storage up and down their aisles. He feels this is what Vision's has.

Kathy Dodge feels Vision's is definitely a medical use.

Chairman Galacz closed the meeting to the public.

Menuck stated the issue for her is the vacant use, with this six-month provision. Just because the prior owner paid rent didn't mean that the use was not vacated or abandoned. Martin clarified the issue is a change of use, not based on the six months. The six months vacant is another issue along with the 30-day provision that they have to request relief within 30 days of being told they have to have a site plan review. Martin still contends the proposed use is different from chiropractor because of the proposed retail and the storage in the back wasn't Dr. Doner's. He believes it was Zilka's storage. Menuck stated the petitioner has not provided proof to clarify these items Martin just mentioned.

Cindy Forcier clarified the storage was her father's, Ernie Zilka, personal storage.

Attorney Dovre addressed the unoccupied for six months-that is not focused on change of ownership, unoccupied by the new permitted use for more than six months. Vision's didn't have a certificate of occupancy for new use. He also referred to a letter agreement signed by Mr. Martin and Mr. Tarnas from 2010. It is an agreement that site plan review is required and in exchange for that Mr. Tarnas was allowed to make all the improvements in the building which he stated he has done. Without this agreement he wouldn't have been able to do any of that.

Galacz addressed Martin questioning a letter from Martin in November 2013 for conditional approval of site plan drawing submitted, with choice of location of pole light. So they were close, but two items were not produced? Martin stated they were in agreement of how they would like this to be, but what stopped it was the easement agreement.

Attorney Ryan feels the Board is going off on a wrong tangent. There may have been an agreement in 2010. The frustration is they can't comply because, as Mr. Martin has stated, they can't provide a written access agreement from the neighbor. As for the intent from 2008 was always to operate as a medical facility. They can't provide relief because they can't get an agreement.

Ash questioned the requirement of access agreement. Martin clarified, part of the site plan requirements are if you are going to utilize somebody else's property for ingress or egress then you have to have a written agreement.

Menuck proposed they deny the variance, that site plan review and approval is required based on lack of evidence that they met; 6 month rule, change of use, and 30

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day notice. Attorney Dovre suggested they move to affirm the City Manager's interpretation of site plan approval being required because a breach of duty or discretion by the Manager has not been shown in administering the zoning ordinance.

Moved by Menuck, seconded Ash, to approve the proposed motion as stated by Attorney Dovre.

Yes: Menuck, Ash, Galacz, Harrop, MacGillis  
No: None

MOTION CARRIED

Chairman Galacz called for a recess.

The meeting recessed at 7:56 p.m.

The meeting reconvened at 8:16 p.m.

Attorney Ryan requested to table the next variance request because they are going to get together with Martin and talk more. Dovre stated it may be a lesser variance.

Moved by MacGillis, seconded Menuck, to table the variance request "B" to Thursday, October 23rd at 6:00 p.m.

ADJOURNMENT

Moved by MacGillis, seconded Menuck, to adjourn the meeting.

Yes: All  
No: None

MOTION CARRIED

The meeting adjourned at 8:28 p.m.

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Patty Harrop, Secretary

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Dennise Dryden, City Clerk