

Vice Chairperson Colling stated that the variance request had carried. He verified that the applicant understood the conditions. Mr. Syed stated he understood that 12 feet was the maximum height. Vice Chairperson Colling clarified that was from the ground to the top of the cabinet, and that the applicant needed to consult with Staff before any repairs are made to understand their issues. He stated that at the Board's request, Staff agreed to inspect the repairs prior to the sign receiving final approval.

Mr. Syed asked if a permit would be required for that inspection. Mr. White explained that normally a bond was required to cover any inspection fees; however, he would discuss that matter with the Building Department Director. Vice Chairperson Colling stated the Board would like the inspection fees waived. Mr. White clarified there was normally a \$50.00 panel change fee and there was no inspection fee; however, the Building Department would work with the applicant.

Mr. Syed thanked the Board for their consideration.

**6B. ZONING BOARD OF APPEALS**  
**PUBLIC HEARING – FILE NO. 00-030**

Location: 71 N. Livernois, located on the west side of Livernois, north of Walton Boulevard, identified as Parcel No. 15-09-476-046, Zoned R-2 (One Family Residential), and known as the Avon Prairie House.

Request: An Amendment to a Use Variance granted on September 25, 2000 with findings and conditions, pursuant to Section 138-113 (Use variance) of the Rochester Hills Code of Ordinances (formerly Section 24.07 of Ordinance 200), to modify the hours of operation.

Applicant: Avon Prairie House  
71 N. Livernois  
Rochester Hills, Michigan 48307

Vice Chairperson Colling stated that the Board would resume discussions as the Zoning Board of Appeals; read the request for the record, and asked the applicant to come forward to the presenter's table and provide his name and address and a brief summary of the request.

Mr. Donald Westphal, 71 N. Livernois, was present. Vice Chairperson Colling asked the applicant to provide a summary of his request.

Mr. Westphal stated they had worked to obtain a Use Variance for the Avon Prairie House, and felt they had done a good job in dealing with the concerns of the adjacent neighbors. He stated their request related to the hours of operation of business, which have created a hardship for them in that a number of prospective tenants required evening hours. He noted there was a very competitive office market in the Greater Rochester area. He stated changing the use from a residential building to an office use involved many building and construction issues, and the variance was critical to allow them to sustain the building.

Vice Chairperson Colling read the summary from the Staff Report as no Staff was available for the meeting. He noted the analysis portion of the Staff Report stated it appeared that the applicant had lived within the conditions included in the Use Variance granted on September 25, 2000.

Vice Chairperson Colling opened the Public Hearing at 8:39 PM.

**Jane Fleming, 1361 New Life Lane**, stated she was present to support Mr. Westphal. She explained her house was directly in back of the Avon Prairie House. She stated the original hours of operation were intended to be in keeping with the neighborhood atmosphere, and she felt he had done an excellent job of doing that. She indicated she had no objection to the proposed hours of operation, and she thought it would be in the City's best interests to allow him to try to get the occupancy he needed. She stated she was in favor of his property being productive and making some money, and as a resident, was willing to make whatever concessions were necessary. She felt she had the most visual impact than most of the other adjacent neighbors, due to the fact that her living area was very open. She stated the City should have more business people like Mr. Westphal.

Vice Chairperson Colling asked Ms. Fleming if she understood that if an amendment to the Use Variance were granted to change the hours of operation, those hours of operations would apply to all tenants in the building. Ms. Fleming stated she understood that, and noted the hours were a time frame and it did not necessarily mean that someone would be there from 7:00 AM to 9:00 PM every day, but rather the hours would accommodate someone's schedule.

Vice Chairperson Colling stated the possibility existed that although all tenants might not be at the premises during that time frame, it was possible a tenant would be there during that time frame. Ms. Fleming indicated she understood.

There being no other persons wishing to speak, Vice Chairperson Colling closed the Public Hearing at 8:42 PM. He then called for discussion from the Board.

Ms. Brnabic stated she had also considered the fact that the amended hours of operation would apply to the whole establishment, and it could not be known what type of tenants would occupy the premises in the future. She stated she did not think the proposed family counselor would generate a lot of additional traffic, but thought the Board should consider the traffic that could be generated by future tenants.

Mr. Westphal stated when the Use Variance was granted, it was stipulated that the building would be a professional office with no medical or dental, which had a high turnover clientele. He explained he occupied the entire second floor and probably had three or four clients a week for his business. He stated the first floor had been occupied by two attorneys that probably did not see more than two clients a day. He stated a mortgage broker leased half of the lower level, and most of his work was conducted over the telephone and he had one or two closings a week. He pointed out they had never had a full parking lot, and although he noted they were not fully occupied, they had never come close to occupying all the parking spaces in the parking lot. He stated after being in the building for three years, he was confident the use being contemplated

and the uses the original variance allowed, would not generate a considerable amount of traffic, particularly during the evening hours.

Ms. Brnabic noted the applicant seemed to be resolved to continue with the same format that presently existed, but questioned the potential change of tenants in the future.

Vice Chairperson Colling noted Condition #1 of the original Use Variance granted on September 25, 2000, specified the allowed uses for the building, which was not being changed. He explained the type of tenant that would be actively recruited would be a low-traffic, professional tenant.

Ms. Brnabic referred to the proposed motion in the packet stated: "Use of the subject site and the existing structures shall be generally limited to daytime business hours (7:00 AM to 9:00 PM, Monday through Friday)...", and suggested the word "daytime" be removed. She noted that evening hours began after 6:00 PM. Mr. Duistermars agreed that the word "daytime" should be eliminated from the motion.

Ms. Brnabic asked what "occasional" Saturday use meant. Mr. Westphal stated he had requested Saturday hours, and noted he would prefer that the Saturday hours be similar to the regular weekly business hours, such as 8:00 AM to 5:00 PM. He explained some professionals considered those hours regular business hours; however, he would accept the hours requested in the Staff Report.

Ms. Brnabic asked the applicant if he was requesting occasional business hours or regular business hours. Mr. Westphal stated he was requesting regular business hours. Vice Chairperson Colling clarified that the motion in the packet was a sample motion, and the applicant's request stated 7:00 AM to 12:00 PM on Saturdays, and did not state occasional. Mrs. Brnabic suggested that the word "occasional" be removed from the motion because that was not what the applicant had requested.

Mr. Verschuere referred to a letter dated May 25, 2005 from Mr. Westphal to Mr. Anzek, which stated:

"In accordance with our use variance for the Avon Prairie House, we are requesting your determination as to the acceptability of a family counselor as a tenant for the Avon Prairie House. We would like to extend our current business hours by 2 hours, from 8:00 AM to 6:00 PM to 8:00 AM to 8:00 PM, and Saturdays for the following reasons:

- Counselor will be performing a service to the community.
- Not more than 2 or 3 vehicles in the parking lot after 6:00 PM
- Will not create any additional noise or traffic nuisances to the community
- Meetings will not be an every evening occurrence.

The occupants of the Avon Prairie House have all proven to be good corporate citizens in the neighborhood and we have never received any complaints for traffic or noise of any

type.” (A copy of the letter has been placed on file and becomes a part hereof by reference).

Mr. Verschueren stated that the applicant would like to extend the current business hours by two hours and Saturdays. Vice Chairperson Colling noted that letter was the initial letter that started the process; however, the request in the packet stated from 7:00 AM to 9:00 PM on weekdays, and 7:00 AM to 12:00 PM on Saturdays.

Mr. Duistermars stated that establishing regular office hours meant that regular activity during those hours was expected. He asked if the proposed family counselor intended to be in the office regularly on Saturdays from 7:00 AM to Noon. Mr. Westphal stated he understood the family counselor would like to schedule client meetings during the requested hours.

Vice Chairperson Colling reminded the Board that if the hours were changed, they would apply to all tenants in the building. Mr. Duistermars stated in this case, the stated business hours were meant to alleviate congestion and traffic. He noted the neighboring areas were quite busy at all times, and he did not think that extending the business hours for the applicant would change much in the area.

Vice Chairperson Colling reminded the Board that only five members were in attendance, and the request was an amendment to a Use Variance requiring a unanimous vote to pass. He also noted that the Avon Prairie House was a great experiment for the Rochester Hills Zoning Board of Appeals with respect to Use Variances, which had worked out very nicely. He pointed out the Board had heard from a neighbor, who had been quite worried about the impact when the Use Variance was first proposed because she had the most visibility. He noted if the neighbor was satisfied, he did not see a reason for not changing the hours as he did not anticipate there would be any difference in the behavior of Mr. Westphal or his tenants. He suspected that Saturday operation until Noon would become the norm, but based on the way the premises had adapted and treated the neighborhood, he did not believe it would become an issue.

Ms. Brnabic noted that Mr. Anzek has suggested in his Staff Report that the Board consider the hours be extended Monday through Thursday only and not include Fridays. She questioned the reason for that recommendation.

Mr. Westphal stated he did not understand that suggestion as he did not think that Friday night was any different than the other weeknights. Vice Chairperson Colling stated he did not think it would make that much of a difference, noting the tendency of most business employees was to leave the office early on Fridays. He pointed out that was merely a suggestion by Staff for the Board to consider.

Vice Chairperson Colling called for any further discussion. Upon hearing none, he called for a motion. Mr. Verschueren verified that any motion was intended to cover both buildings on the premises. Mr. Westphal agreed that was correct.

**MOTION** by Duistermars, seconded by Verschueren, in the matter of City File No. 00-030, the Zoning Board of Appeals **AMENDS** Condition #3 of the previously approved

Use Variance (granted on September 25, 2000, and amended on January 28, 2002) for 71 N. Livernois, commonly known as the Avon Prairie House, Parcel Identification Number 15-09-476-046, to read as follows:

3. **Use – Operating Hours.** Use of the subject site and the existing structures shall be generally limited to normal business hours (7:00 AM to 9:00 PM, Monday through Friday; and 7:00 AM to 12:00 PM, on Saturday), with occasional late night or weekend use to be allowed, and with the intent of this Condition being to limit evening and weekend use and to prohibit 24-hour or other extensive use incompatible with adjacent residential areas.

**Roll Call Vote:**

Ayes: Weisberger, Brnabic, Colling, Verschueren, Duistermars  
Nays: None  
Absent: Brennan, Cockey

**MOTION CARRIED**

Vice Chairperson Colling noted for the record that the motion had passed unanimously. Mr. Westphal thanked the Board for their consideration. Mr. Verschueren congratulated the applicant on the excellent job they had done in restoring the property.

**7. ANY OTHER BUSINESS**

Vice Chairperson Colling noted that the next regular meeting would be held on August 8, 2005, as the July 25, 2005 meeting had been cancelled. He asked if there was any other business.

Ms. Brnabic referred to the discussion on the first Agenda Item regarding replacement signs and the matter of ground signs versus pole signs. She noted the Board had discussed the fact that a ground sign at twelve feet would be unsightly; however, if the Board believed the pole sign was totally inappropriate, the Board could not allow replacement of a pole sign.

Vice Chairperson Colling stated that the Board was misconstruing the terms “pole sign” and “monument”. He explained that the King’s Pizza sign located on Auburn Road was considered to be a monument sign; however, all that had been done was that the pole had been cut down and the sign remounted. He stated that theoretically, it was still a pole sign. He indicated that the monument sign had more to do with the height than the style. He pointed out that most of the businesses within the City had construed a monument sign to be a solid wall or structure. He agreed the point about a monument sign twelve feet high was ridiculous if built in that fashion. He stated monument more referred to the height from the ground than it did as to how it was constructed.

Mr. Verschueren noted there were problems with the wind factor on pole signs, causing them to break easily and cause accidents.

Ms. Brnabic asked if the Board had determined that the existing pole sign was unacceptable. Vice Chairperson Colling stated that theoretically if the Board had required the applicant to