

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

(ON APPEAL FROM THE CITY OF ROCHESTER HILLS ZONING

RECEIVED FOR FILING  
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2004 MAY -3 P 12:56

04-058042-AA  
OAKLAND COUNTY JUDGE JOHN J. McDONALD  
COUNTY FINSILVER FRI V ROCHESTER H

FINSILVER/FRIEDMAN VENTURE I, L.L.C.,  
a Michigan limited liability company

Case No. 0  
Hon.

Appellant,

ZBA File No. 03-015

v.

CITY OF ROCHESTER HILLS ZONING  
BOARD OF APPEALS,

Appellee.

KAREN H. SAFRAN (P51317)  
GREGORY T. OBLOY (P58104)  
Attorneys for Appellant  
300 E. Maple Road, Third Floor  
Birmingham, MI 48009  
(248) 644-4840

**APPELLANT'S MOTION TO WAIVE REQUIREMENTS  
OF MCR 7.101(C)(2)(b)**

Appellant, Finsilver/Friedman Venture I, L.L.C., a Michigan limited liability company ("Finsilver"), by and through its attorneys, CARSON FISCHER, P.L.C., states:

1. This matter is before the Court on Appellant's Claim of Appeal from the decision made by the City of Rochester Hills Zoning Board of Appeals ("ZBA") at a hearing held on February 23, 2004, denying Appellant's request for a use variance pursuant to Section 138-113 of Article III of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills.

2. Finsilver seeks relief from MCL 7.101(C)(2)(b), which requires the appellant to file a bond for costs in the trial court.

3. Insofar as this is an appeal from a zoning board of appeals, there is no trial court in

CARSON FISCHER, P.L.C., THIRD FLOOR, 300 EAST MAPLE ROAD, BIRMINGHAM, MICHIGAN 48009-6317 (248) 644-4840

which to file a bond.

4. Although a party aggrieved by the decision of a zoning board of appeals may appeal to this Court by right, MCL 125.585(11), there is no Michigan Court Rule which specifies the procedure for appeals from a zoning board of appeals.

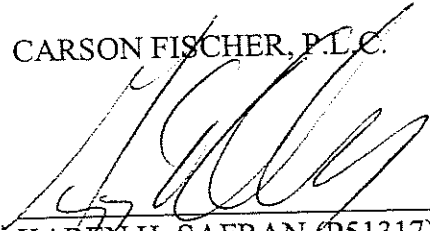
5. In the absence of any statute or ordinance which specifies the manner in which zoning appeals should be heard, the Michigan Court of Appeals has ruled that the procedures applicable to administrative agencies in general should apply. *Walker's Amusements v City of Lathrup Village*, 100 Mich App 36; 298 NW2d 878 (1980).

6. The Court Rule which pertains to administrative appeals, MCR 7.104, provides that the bond requirements of MCR 7.101 do not apply. *See* MCR 7.104(A).

WHEREFORE, Finsilver respectfully requests that this Court grant its motion and issue an order providing that the requirements of MCR 7.101(C)(2)(b) are waived and that Finsilver is not required to file a bond.

Respectfully Submitted,

CARSON FISCHER, P.L.C.



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KAREN H. SAFRAN (P51317)  
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Attorneys for Appellant  
300 E. Maple Road, Third Floor  
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Date: May 3, 2004

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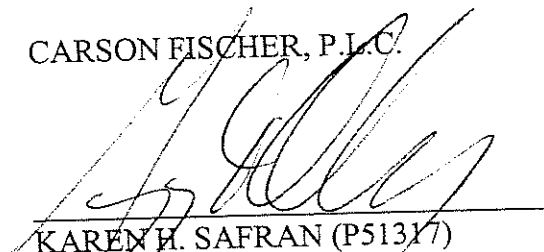
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Attorneys for Appellant  
300 E. Maple Road, Third Floor  
Birmingham, MI 48009  
(248) 644-4840

NOTICE OF HEARING

TO: Clerk of the Court  
Appellee

PLEASE TAKE NOTICE that Appellant's Motion to Waive Requirements of MCR  
7.101(C)(2)(b) will be heard on May 26, 2004 at 8:30 a.m. at the Oakland County Circuit Court.

CARSON FISCHER, P.L.L.C.

  
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Date: May 3, 2004

CARSON FISCHER, P.L.L.C., THIRD FLOOR, 300 EAST MAPLE ROAD, BIRMINGHAM, MICHIGAN 48009-6317 (248) 644-4840

**PRAECIPE FOR MOTION AND MISCELLANEOUS DOCKET**

STATE OF MICHIGAN  
The Circuit Court for the County of Oakland

Finsilver/Friedman Venture I, L.L.C.

Plaintiff

v.

City of Rochester Hills ZBA

Defendant

04-058042-AA



(HERE)

JUDGE JOHN J. McDONALD  
COUNTY FINSILVER FRI V ROCHESTER HI

Motion Date: Wednesday, May 26, 2004

Motion Title: Appellant's Motion to Waive Requirements of MCR 7.101(C)(2)(b)

**YOUR MOTION WILL NOT BE SCHEDULED IF YOU DO NOT COMPLETE EITHER #1 OR #2 BELOW:**

1. I hereby certify that I have made personal contact with N/A  
on \_\_\_\_\_, requesting concurrence in the relief sought with this motion and  
that concurrence has been denied.

OR

2. I have made reasonable and diligent attempts to contact counsel requesting concurrence in the relief sought with this  
motion on N/A.

Attorney: [Signature] Phone: (248) 644-4840  
Moving Party: Appellant  
Date: 05/03/2004

*(Motion briefs must be delivered to the judge's chambers)*

ROUTED TIME STAMP

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