

that affect this property in a residential zoning district. No testimony has been presented to show that the circumstances for this property are any different than any other residential property in the City.

2. The ZBA finds the granting of a variance would alter the essential character of the area and locality. Specifically, granting the variance would affect the quality of life in and around the subject property and be detrimental to the health and safety of these and nearby residents.
3. The ZBA finds that the applicant's request is self-created based on their desire to keep ducks within a residential zoning district. Specifically, the keeping of poultry on less than one (1) acre.
4. The ZBA finds the granting of this variance would negatively impact the spirit of the ordinance by allowing the keeping of poultry in a residential zoning district of less than one (1) acre.
5. The granting of this variance would not promote the intent and purpose of the ordinance to restrict the raising of poultry to lots of sufficient size to allow proper husbandry.
6. Granting such a variance would be precedent setting, making it difficult for enforcement to follow through on cases of this type and for this Board to maintain decisions on these matters.

Roll Call Vote:

Ayes: Brennan, Weisberger, Robbins, Verschueren, Cockey, Colling, Rosen

Nays: None

Absent: None

MOTION CARRIED

Chairperson Cockey noted the applicant's request had been denied, and advised the applicant she had the right to appeal the Board's decision to Circuit Court.

7. NEW BUSINESS

PUBLIC HEARING – FILE #03-015

Location: Vacant parcel adjacent to 1812 and 1814 Rochester Road, located on the west side of Rochester Road, north of Hamlin Road, Parcel Number 15-22-451-033, zoned R-3 (One Family Residential).

Request: A use variance, pursuant to Section 138-113 (Use variance) of Article III of the Code of Ordinances, to allow parking in an R-3 Zoning District for use by businesses of the adjacent office buildings.

Applicant: Stanley H. Finsilver
34975 West Twelve Mile Road
Farmington Hills, Michigan 48331

Chairperson Cockey read the request for the record, and noted the applicant was present.

Stanley H. Finsilver, 34975 W. Twelve Mile Road, Farmington Hills, provided the following review of his request. He stated since 1998 his property has housed a Mercy Care Clinic and professional offices from St. Joseph Hospital. He indicated the rear building has housed a pediatric dentist's practice for several years. He noted both uses had become a part of the community and serviced many of the City's residents, and were an asset to Rochester Hills.

Mr. Finsilver stated zoning services were available in order to enhance and service the residents as the community continues to grow and flourish. He noted both Mercy Care and the dental practice had also grown and flourished, causing parking problems on certain days of the week and at certain times of the day.

Mr. Finsilver stated he wanted to alleviate the parking problems for the businesses. He indicated that several years ago he had graveled a portion of the property in question to allow a place for snow removal, thus freeing up all available parking spaces. He stated for a period of time, he was able to use the area behind the commercial property to the south of his property; however, a new occupant was moving into that space and it would no longer be available to him.

Mr. Finsilver stated he had approached the Planning Department regarding the use of the vacant parcel behind his property, which he had owned since 1987. He indicated he was told the property would have to be rezoned, or he would be required to obtain a use variance. He stated he was informed that prior to requesting a use variance, he would have to request a rezoning, despite the fact he did not intend to add footage to the existing structures. He pointed out he was informed that the Ordinance required a denial for rezoning prior to requesting a use variance.

Mr. Finsilver stated he had gone through all the required steps necessary to appear before this Board, and noted it had never been his intention to expand the buildings on the property. He indicated the concern of both the Planning Commission and the City Council was that there would be no control if the property were rezoned, noting if the property were redeveloped, a building could be constructed. He noted he had specifically stated that was not his intention, but both entities indicated they would have no control if the property were rezoned. He stated he asked both Boards if the rezoning application was being denied because of concerns of not being able to control building on the property, and both answered affirmatively.

Mr. Finsilver indicated a use variance was very different from a rezoning because the ZBA could mandate exactly what the property was used for and the use would be totally controlled by the variance. He stated the letter he included with his application responded to each of the findings stated in the Ordinance.

Mr. Finsilver referred to "no reasonable use of property" and stated the vacant parcel of land was located behind his office buildings, surrounded by parcels on all sides owned by non-related parties, creating a land-locked parcel of land. He indicated due to the fact the vacant parcel did not have access to a public road, use of the parcel as a single-family home site diminished its value.

Mr. Finsilver referred to "unique circumstances" and stated the hardship affecting his parcel was unique and did not apply to the surrounding districts or neighborhood. He stated he was unaware of any other parcel in the vicinity that was affected by similar circumstances, i.e., landlocked or without value for the purposes permitted by the Zoning Ordinance.

Mr. Finsilver referred to "essential character of the neighborhood" and stated the essential character of the area would not be altered if he were permitted to allow parking on the vacant parcel. He noted the vacant parcel was located within a well-developed commercial corridor on one side, offering many of the basic goods and services required by the community's residential population. He indicated appropriate screening would be provided to shield the vacant parcel from all neighboring residential uses, and no important natural, scenic or historical feature would be modified or adjusted if a parking area were created.

Mr. Finsilver referred to "hardship is not self-imposed" and stated when he developed the office building, he did not anticipate that his tenant's use of the property might require additional parking. He noted his original site plan was approved with parking allocations that fulfilled all Code requirements. He stated his tenants were doctors and dentists who, at times, had more intensive parking needs. He explained he did not consider that the vacant parcel could not be developed in a manner that is consistent with the current zoning designation. He indicated the situation arose as a result of mere happenstance.

Mr. Finsilver referred to "public interest protected" and stated the granting of a variance to allow parking on his vacant parcel would provide greater comfort and convenience to residents visiting the businesses; the tenants of the businesses would enjoy greater economic stability, and responsible, reasonable access would preserve the vacant rear parcel.

Mr. Finsilver referred to "standards" and submitted that the proposed variance would not impair an adequate supply of light and air to adjacent properties, unreasonably increase the congestion of public streets, increase the danger of fire, endanger the public safety, or unreasonably diminish or impair essential property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morale or welfare of the inhabitants of the City.

Mr. Finsilver stated the proposed variance would promote the purpose and intent of the Zoning Ordinance; would be compatible with the character of the general vicinity, adjacent uses, land and natural environment, the capacity of public services and facilities, and the community as a whole; would be adequately served by essential public facilities and services, and not be detrimental or hazardous to future neighboring uses, persons, property or public welfare, and not create additional requirements at public costs for public facilities and services.

Mr. Finsilver stated in 1987/1988, he developed this historic site that was in total disrepair. He commented on the day he closed on the property, the previous owner had received a citation for allowing a historic site to be in such a condition. He indicated he worked with the Historic Districts Commission (HDC), and was able to develop a site plan and building elevations that subsequently won commercial development of the year from the City Council. He noted that approved site plan had met all Ordinance requirements. He stated the property continued to be a beautiful part of the historic community of the City, of which he was very proud.

Mr. Finsilver stated the parcel in question was approved for a split many years ago, although it was not known when that split occurred. He stated the land was rezoned R-3 or R-4. He indicated upon direction from City Staff, the property was combined with the office parcel several months ago. He stated he had been informed that the property could not be split again. He pointed out he understood the property was buildable for a residence; however, it had no frontage. He indicated the only access for a house would be through the parking lot of the office building. He stated the parcel could not be sold as a separate parcel, but rather could only be sold with the office property as one parcel.

Mr. Finsilver stated he understood the concerns of the property owners adjacent to the vacant parcel, but felt with the Ordinance requirements for fencing and landscaping, the parcel would become more pleasing. He indicated he would work with the ZBA to ensure the property met the screening concerns of all parties.

Mr. Finsilver stated the request was necessary, because without the variance, his tenants could find it impossible to remain in their present location if the problems continued. He believed the use of the land would be a solution to a parking dilemma, as well as allow him the opportunity to use property he owns and pays taxes on. He explained he had tried all other possibilities, including the use of other adjacent properties when available.

Chairperson Cockey asked whether Staff had anything additional regarding the applicant's request. Ms. Millhouse stated the Staff Report included with the packet information was self-explanatory, and noted Mr. Finsilver had provided a very sufficient explanation of his request. She noted she would be available for any questions the Board might have.

Chairperson Cockey requested clarification on the current zoning of the parcel. Ms. Millhouse stated the property was zoned R-3 (One Family Residential).

Chairperson Cockey opened the Public Hearing at 8:15 PM, noting two (2) speaker cards had been submitted in connection with this matter.

Rinaldo Lucchesi, 153 Sandalwood, stated he was concerned about the proposed variance. He indicated the applicant had stated he used the vacant parcel for snow removal; however, there had not been any snow stored on the lot this year. He stated the applicant had informed him three years ago that he would level the parcel and use it for snow removal. He explained what happened was that an ambulance service, a previous tenant of one of the buildings, parked their ambulances on that lot. He noted the running of the diesel engines during the winter months had been disruptive to the adjacent homeowners. He stated the ambulance company moved out, and now there was a dentist practice in the space. He indicated during the summer of 2002, cars were parking on the gravel lot. He objected to the gas fumes from cars parking on the lot, noting his home was only twenty (20) yards away. He stated one of his neighbors had taken pictures, and eventually the City required the area be closed off, and the gate reinstalled. He stated all the property behind the applicant's buildings was zoned residential, which he felt would eventually be used for homes. He indicated he did not want a parking lot near his property, particularly since his children played in his backyard. He stated the applicant was requesting about fifty (50) parking spaces on the lot, which would cause a lot of pollution and change his quality of life. He expressed concern that if the applicant were allowed parking in that area, the adjacent businesses in the area would do the same thing. He suggested the applicant purchase another vacant parcel adjacent to his property to use for parking, noting that property was within the bounds of the cement wall running to Hamlin Road. He felt business should stay on the road, not run deep into a subdivision, and a parking lot adjacent to his property would lower his property value. He stated a variance would go against the zoning of the area and the Master Plan. He believed the current parking was sufficient for the businesses. He requested the Board consider the concerns of the adjacent residents.

Tricia McDonald, 161 Sandalwood, stated she was present at this meeting to hopefully bring closure to this parcel issue. She indicated she had attended the Planning Commission and City Council meetings regarding the proposed rezoning of the parcel. She understood there were parking problems at the complex; however, she was concerned her quality of life would be changed if the variance was granted. She felt there would be noise, air and light pollution, and the whole issue was a nuisance. She asked the Board, as a resident of the City, to reject the requested variance.

Chairperson Cockey called for anyone else wishing to speak on this matter. He noted for the record that the Planning Department had received a telephone call on Monday, February 23, 2004, from resident **Don D. Dafnayaka, 16 Sandalwood Court**, objecting to the use of the vacant parcel for commercial purposes. There being no additional persons wishing to speak on this matter, Chairperson Cockey closed the Public Hearing at 8:22 PM.

Mr. Rosen clarified the applicant had purchased the parcel in 1987. Mr. Finsilver indicated that was correct. Mr. Rosen asked the applicant if he knew when the parcel had been split, and whether it was originally part of the "bowling alley" parcel fronting on Hamlin Road. Mr. Finsilver stated he believed

it was part of that property, based on the width, but explained when he purchased his property, it was part of the site. He noted it had a separate Parcel Identification Number, and was a separate parcel.

Mr. Rosen asked whether the parcel had been included because it was available. Mr. Finsilver indicated it was part of the package. He explained he purchased his property from an attorney who had offices in the front building, and stated when he purchased the building, the landlocked parcel came with it. He stated the attorney had indicated that was how he had purchased the site.

Mr. Rosen clarified the previous owner had purchased the vacant parcel from the owner of the bowling alley lot. Mr. Finsilver indicated he did not know if that was what happened. He explained there was no information available regarding how the land had been split.

Mr. Rosen asked if Staff had any information about when the parcel was split. Ms. Millhouse stated Staff had been unable to locate that information. She explained when Mr. Finsilver purchased the property, it was already two (2) parcels, and noted Mr. Finsilver indicated it was two (2) parcels when the prior owner purchased it. She stated the split would have to go back prior to that time.

Mr. Rosen clarified the owner the applicant purchased the property from had two (2) separate parcels. Mr. Finsilver stated there were two (2) separate Parcel Identification Numbers when he purchased the property.

Mr. Rosen asked whether the applicant knew if the prior owner had purchased two (2) separate parcels, or purchased the parcels at different times. Mr. Finsilver indicated he did not now how the property had been purchased by the prior owner.

Mr. Rosen stated it was his understanding that "self-created" was if the applicant had purchased it from the original owners and then split the lot, it would qualify as self-created. He questioned whether a split by a prior owner made a difference, although it was his understanding it did not make a difference. He explained by purchasing the property, the applicant or the prior owner had created the circumstance that the parcel was landlocked and much more difficult to develop. He stated in this particular case, it was because of actions someone in the chain of title took that created the circumstance of a landlocked parcel.

Mr. Colling asked the applicant why he combined the two (2) parcels in February, 2003. Mr. Finsilver explained it had been suggested to him by Staff that the parcels be combined.

Mr. Colling questioned whether the applicant was being taxed at a commercial rate on the vacant parcel, or at the R-3 zoning rate. Mr. Finsilver stated he did not believe he had received a tax bill at this time.

Mr. Colling stated he would like clarification on the taxation rate on the combined parcel, whether it was taxed at R-3 or 0-1 rate. Ms. Millhouse asked the applicant if he had noticed a change in his tax bill. Mr. Finsilver indicated he expected to receive a new assessment. Mr. Colling noted he did not believe a parcel could be combined and taxed at two different rates. He indicated if the combined parcel was being taxed at an office rate, he felt the Board should allow the individual to use the property for what he was being taxed.

Mr. Robbins questioned if the parcel was split, and then combined, whether the self-created issue would still be effect. He noted the applicant indicated the City had promoted the combining of the parcels.

Chairperson Cockey stated Ms. Millhouse had just provided him with a copy of a section from Michigan Zoning and Planning, Third Edition (written by Clan Crawford, Jr.), which he felt was relevant to the

subject request. He noted the section referred to a case entitled Puritan-Greenfield Association vs. Leo, and read: "Leo also quotes with approval a statement that the hardship must not be self-created but, evidently this does not mean that a variance is prohibited in every situation in which the actions of the applicant can be related in some way to the hardship which exists. Apparently, merely buying property where hardship exists would not prevent an owner from obtaining a variance, nor would the act of purchasing property with notice of zoning restrictions." He indicated he offered this for the Board's consideration, and circulated a copy of the section among the Board Members. (A copy of the referenced quote has been placed in the file and by reference made a part hereof).

Chairperson Cockey referred to "self-created" and stated he assumed if circumstances change over time, a situation could occur whereby the self-created part is negated in some way. He was not sure if circumstances had changed in the subject case, but in some instances there might be grounds for granting a variance at some point due to circumstances that had not existed at a previous time. He pointed out the self-created issue was only one issue in terms of granting a variance. He clarified if the Board determined the applicant's situation was not a self-created issue, there were still a number of other conditions that had to be fulfilled.

Mr. Colling noted the applicant had owned the property since 1987, and asked the applicant if he knew how long the previous owner had owned the property. Mr. Finsilver indicated he was not positive, but guessed the prior owner had owned the property about ten (10) or twelve (12) years.

Mr. Colling stated it appeared the parcel was split prior to the incorporation of Rochester Hills as a City. He verified that it was a condition of the purchase that the previous owner was offering both parcels for sale with no split. Mr. Finsilver stated it was "buy it all or none". He indicated he believed that was because the vacant parcel was landlocked.

Mr. Colling stated based on the information Chairperson Cockey had quoted from Michigan Zoning and Planning, and the applicant's testimony, he did not feel he could view the matter as being a self-created situation. He indicated that was from the standpoint the situation pre-existed any of the City Ordinances; it was offered as one salable entity; the property had since been combined into one property, and he felt it should be treated as one property. He noted, although the Planning Commission had not recommended a zoning change, this was a situation where there was a sizable piece of property that the individual was denied any use to. He did not feel, in the interest of fairness, that a property owner should be entirely denied the use of his property. He felt some sort of an accommodation could be reached, which would allow the applicant to use his property, while alleviating the concerns of the adjacent residents.

Mr. Robbins stated he agreed with Mr. Colling, noting the key was reasonable use of the property. He felt one of the reasons City Council had denied the rezoning request was that a use variance would provide more control over what the applicant could do with the property, there would be better-defined requirements of the use of the property, it would help allay the fears of the adjacent residents, and provide a resolution of the situation imposed upon the applicant.

Mr. Verschueren asked Staff whether the Ordinance required a screened wall for a parking lot that faced a residential section. Ms. Millhouse stated Type B screening is required between a non-residential property and residential property. She explained when a non-residential property is developed, the Type B screening is required, which includes distance, and a six (6') foot opaque screen. She stated the Ordinance would allow either a fence, masonry wall or a six (6') foot berm.

Mr. Weisberger asked the applicant what percentage of his office buildings were occupied at the current time. Mr. Finsilver indicated both buildings were full, noting Mercy Care occupied the front building;

the dentist occupied approximately Eighty (80%) Percent of the back building, and a hearing aid company occupied the remainder of the space in the back building.

Mr. Weisberger asked the applicant if his request for additional parking was generated by complaints received from his tenants. Mr. Finsilver indicated it was. He explained parking was not always a problem; however, certain times of the day, such as after the children are out of school, the dentist is busy; and certain Saturdays when Mercy Care is open until noon, there is some congestion. He noted for the record that he was not requesting fifty (50) spaces as one of the residents had suggested, but rather eighteen (18) spaces. He explained his proposed plan included setback requirements.

Mr. Weisberger asked Staff if the current office use and associated parking were in compliance with the current Ordinance, noting it was in compliance at the time of purchase. Ms. Millhouse stated there had not been a need to conduct such an analysis at this time.

Mr. Weisberger questioned whether the City's office standards had become stricter since 1987. Ms. Millhouse stated the matter could be researched, but noted two (2) years ago the length of the parking spaces and the maneuvering aisle had been reduced, allowing more parking spaces in a given area.

Mr. Weisberger referred to the combining of the parcels, and asked if the applicant were to subsequently sell or attempt to divide the vacant parcel, whether under the Land Division Act the parcel would not be considered landlocked if an easement were included as a condition. He noted it was not a recommended planning principal to allow access through a commercial property to a residential property, but that technically the owner of the parcels could grant an easement through the parcel. Ms. Millhouse stated the Land Division Act was State Law, and pointed out in that law one of the requirements for a division is that it meets all the zoning requirements of the local community, if the community has a Land Division Ordinance. She noted the City did have a Land Division Ordinance, which contained a requirement that all lots have access to a public or private road.

Mr. Weisberger asked if the parcels had not been combined, whether the applicant would have been prohibited from granting an easement. Ms. Millhouse stated she could not respond to that question, as she did not know. Mr. Weisberger noted the Land Division Act of 1997 had given new powers to the local communities, and stated he was not aware of whether the applicant was prohibited because the Ordinance did not allow it, which could be a self-created hardship.

Mr. Weisberger stated it should be kept in mind that when the applicant purchased the property, the vacant parcel was a "throw in" parcel that may not have been zoned correctly, and the value to the purchaser and the seller was taken into account and may have been factored into the total price per square foot, although it probably was not the highest valued parcel. He explained when the Board considered a use variance, one of the first things considered was whether a reasonable return on a prudent investment could be had. He stated there was case law that indicated the expectations of purchaser at the time of purchase should be considered, and noted he did not think the "throw away" parcel was of value to the purchaser. He indicated what the applicant had to keep in mind was not whether it was the highest and best use of a residential parcel, but what was purchased, what its value was, what he expected from that value, and whether or not the applicant might realize that return.

Mr. Finsilver stated when he originally had the property site plan approved and was working with the HDC, he had asked for a rezoning at that time in the event the need for additional parking arose. He stated at that time, the Planning Commission decided it was not needed for parking, and the parcel was not rezoned. He indicated the site plan approval included access to the parcel, and the gate that a resident referred to had always been there. He stated it was his perception at that time that if he ever needed to rezone the parcel for parking, he would be able to do so. He noted until the last few years, the

situation had not occurred; however, Mercy Care had recently changed the use of the facility, increasing the parking needs. He felt the situation had created itself, and noted he would be spending money to create a parking lot that did not provide him with any income. He stated if he did not need to create the parking area, he would not.

Chairperson Cockey stated he drove through the applicant's property and looked through the gate and did not see any piles of snow behind the gate, although it appeared a snow plow had pushed snow to the back of the parking lot, covering some parking spaces. Mr. Finsilver stated approximately two (2) weeks ago he was billed for a loader, noting he had received calls from his tenants about snow in the parking lot.

Chairperson Cockey questioned whether all the parking spaces were currently clear of snow and not blocked by snow. He asked the applicant if the second building had been on the site and considered a historical asset at the time he purchased the property. Mr. Finsilver stated a section of the front building was a former house. He explained an addition was put on the front building and the back building was constructed at the same time.

Chairperson Cockey stated at the time the applicant had worked with the Planning Commission and the HDC, he made a choice about how large a building would be constructed and how large the parking lot would be. He questioned whether the applicant now felt that circumstances had changed and additional parking space was required.

Mr. Finsilver stated he had two (2) tenants who were very successful, and had run out of space from a parking standpoint. He explained for the last few years, when the building next door was vacant, he had made arrangements for his tenants to park on that property. However, the new lessee of that property will no longer allow the applicant's tenants to park there.

Mr. Colling proposed the following motion:

MOTION by Colling, regarding File No. 03-015, that the request for a variance from Section 138-113 of Article III of the Code of Ordinances to allow parking in an R-3 Zoning District, on the parcel adjacent to 1812/1814 Rochester Road, located on the west side of Rochester Road, north of Hamlin Road, for use by the businesses adjacent to the parcel identified as Parcel Number 15-22-451-033, zoned R-3 (One Family Residential), be **GRANTED** with the following findings:

Findings:

1. The applicant has demonstrated that a reasonable return on a prudent investment cannot be realized from this parcel with the current zoning classification. In particular, the current location of the property makes it much less desirable as a residential property, than the proposed use requested.
2. The applicant has demonstrated that a unique circumstance peculiar to the subject property prevents the allowable uses prescribed in a R-3 zoning district. Specifically, the parcel in question would not be viable as an R-3 building site due to access restrictions.
3. The ZBA finds that the granting of this variance would not alter the essential character of the area and locality. Specifically, the applicable ordinance would apply regarding separation of residential from commercial property, and if followed would provide relief with the necessary separation of the commercial and residential property.

4. The ZBA finds that the applicant's request is not self-created based on his desire to incorporate a non-permitted use within the R-3 zoning district.
5. The ZBA finds that the granting of this variance would not negatively impact the spirit of the Ordinance by allowing an O-1 parking use within an R-3 zoning district. Specifically, the property is landlocked and similar conditions are not likely to be encountered within the City.
6. There is compliance with Section 138-109 (Jurisdiction) that the proposed variance will not impair an adequate supply of light, etc., and would not represent a specific health and/or safety issue as long as all applicable Ordinances regarding separation of commercial and residential property are adhered to.

Chairperson Cockey called for a second to the proposed motion. Mr. Robbins stated he would second the proposed motion. Chairperson Cockey then called for discussion on the proposed motion.

Mr. Rosen stated he had trouble with the third Finding because he felt the granting of the use variance would alter the essential character of the area. He thought it would have a negative impact on the residents to the north of the parcel. He commented it would be different if residential properties were being developed. He noted in a residential to residential situation, no buffering would be required because there normally was not conflict of use. He questioned whether the Board was approving the applicant's proposed site plan at this meeting.

Ms. Millhouse stated unless it was referenced in the motion, the Board was simply approving the use. Mr. Colling stated that was the intent of his motion, noting he was not approving any plan. He clarified the intent of the motion was that the applicant work with City Staff and the neighbors to develop a plan that was amicable to all parties.

Mr. Rosen noted that was a good idea, but questioned whether the applicant would have to go through site plan approval. Ms. Millhouse stated she did not believe it was necessary for a parking lot, but rather would be an administrative approval process. She explained a plan would be involved, and the Engineering Department would review the construction of a parking lot.

Mr. Rosen commented that the Planning Commission would ordinarily require an applicant to do right by their neighbors. He noted it bothered him that that would not happen in this case. He felt either it should be specified that the plan go the Planning Commission for site plan review, or it should be specified how far the parking lot should be beyond the normal Class B buffer.

Mr. Colling stated he would be willing to add as a condition to his proposed motion that the matter go before the Planning Commission for site plan review, if the applicant would accept that. Mr. Finsilver indicated that change was acceptable to him.

Mr. Rosen suggested the motion also include that the applicant confer with the adjacent neighbors. Mr. Colling stated he would agree to adding that as a second condition to his proposed motion. Mr. Finsilver indicated he did not have any problem with that condition, noting he had intended to do so.

Mr. Colling stated he viewed the situation as being akin to the fact it was not unusual in subdivisions for a neighbor to put up a fence, noting the R-3 zoning district allowed fences. He indicated the fence could be wood, chain link, or whatever the homeowner chose. He noted the owner of the property could also put a tree line up to block the neighbors' view. He indicated if the objection from the neighborhood was one of use, as they had free use of the property due to the fact it was open land, he understood the

problem the neighbors were having with the property owner now deciding to use the land. He stated the fact of the matter was that the property owner has under State and Federal Law, a constitutional right to utilize the property, and he felt the ZBA should enforce that right. He indicated in this case, however, the developer of the property should comply with all requirements of the City, to the extent of going through a planning session with the Planning Commission, and working with the residents to find an amicable solution, such as a greenbelt, or a wall, and the appropriate distance. He noted the entire parcel would not be blacktopped or used for parking spaces.

Chairperson Cockey asked if Mr. Robbins, as seconder of the proposed motion, agreed to the addition of the two conditions. Mr. Robbins stated he agreed to the changes, as long as the applicant agreed to them.

Mr. Verschueren asked how the Board could vote for a use variance if the matter had to go the Planning Commission. He noted that was more of a request, than a variance. He pointed out if the Board granted a variance, the applicant had the variance.

Mr. Colling stated the motion would grant the variance, but that the motion was conditioned on requiring the applicant to work with the Planning Commission and neighbors to reach an amicable plan, which would prevent the applicant from just paving the entire parcel.

Mr. Verschueren noted the variance would still stand, and the Planning Commission would not have the authority to undo the variance.

Chairperson Cockey recommended the Board prepare a written version of the motion prior to any vote being taken, rather than incorporating comments from the discussion into the motion. He stated it was important for any restrictions to be explicitly stated.

Mr. Brennan suggested it might be beneficial for the Public Hearing to be reopened to take input from the neighbors regarding the conditions. He worried a use variance could be granted, and the conditions would not be upheld.

Mr. Colling stated that was the reason he included conditions in his proposed motion, and noted the conditions would be part of the written record.

Chairperson Cockey suggested the Board establish a clear process by which permission would be granted for the site.

Mr. Robbins stated if the Planning Commission denied the site plan, the use variance would be revoked, because the use variance was reliant upon the Planning Commission approving the site plan to use the property. He clarified the ZBA was granting use of the property in accordance with what the Planning Commission decided was a good site plan.

Chairperson Cockey stated he understood that was the purpose of the proposed motion, but suggested it be written succinctly as a condition to the motion.

Ms. Millhouse stated she understood the motion to say that, at a minimum, the parking lot must meet all the technical standards of the Zoning Ordinance. Mr. Colling stated that was correct. Ms. Millhouse clarified the minimum would require a Type B buffer between the uses.

Ms. Millhouse stated she also understood the motion to say that the applicant must address the concerns of the neighbors. She cautioned the Board to set some parameters, both for the applicant and the

residents. Mr. Colling indicated he understood the Planning Commission would take the neighbors' requests into account, and might require more of a greenbelt, or additional plantings to hide the parking lot, versus a forty-five (45) foot patch of grass. He felt the Planning Commission would have the ultimate say regarding such items as distance or the number of spaces.

Mr. Rosen stated he felt meeting the minimum technical requirements and addressing the needs of the neighbors did not imply a level of agreement could be reached. He explained the Planning Commission liked to know that discussions had been held, and the parties had done as much as possible to resolve the issues. He indicated the applicant would be required to work with the neighbors to present a plan that was most agreeable to both parties.

Mr. Brennan suggested the matter be postponed or tabled to allow the applicant, the neighbors and City Staff an opportunity to work out an acceptable plan.

Chairperson Cockey stated he had serious reservations about whether a variance was merited in this case. He indicated if a variance were to be granted, it should be made very clear what the variance was being granted for. He noted a plan depicting a parking lot had been submitted as part of the request, and suggested the variance be granted relative to the plan, or the plan submitted with modifications. He suggested rather than attempting to design a plan, the matter be postponed to allow the applicant the opportunity to work with the Planning Department and the neighbors, and to bring back a specific plan for the use being requested, including the number and location of parking spaces, buffering, etc. He commented it was his understanding it was appropriate when considering a use variance to be relatively strict or precise with limitation on the use for which the variance is being granted.

Mr. Colling stated if the applicant were agreeable, he would move a motion to postpone.

Mr. Rosen stated he expected it would take the applicant approximately two to three months to go through a revision process. He clarified this was not a matter that would only take two weeks to revise. For that reason, he recommended against tabling the matter. He indicated if the matter went forward, and the variance were granted, it be granted with the expectation that the applicant would work with his neighbors to develop an acceptable plan, review the plan with City Staff, and then proceed to the Planning Commission.

Chairperson Cockey indicated he understood Mr. Rosen's point, and noted he did not believe the matter should be tabled. He clarified a matter is normally postponed to a date certain. He suggested a possible solution of the applicant withdrawing his request until a more specific request could be presented. He noted he was concerned about the intent of granting a use variance with the Planning Commission working out the details at a later date, without providing any specific guidance to the Planning Commission. He explained the granting of a use variance was also granting a right to the applicant to use the property; and if the applicant were unsuccessful in reaching an agreement with the Planning Commission, it would open up the opportunity for the applicant to seek legal redress from the City.

Mr. Colling asked whether the variance could be granted indicating that without the approval of the Planning Commission, the variance would be null and void. He explained, in other words, the applicant must have a site plan approved by the Planning Commission, otherwise the variance would not go into effect. He noted he did not believe that was an unreasonable condition. He stated he would prefer that the matter go through the normal planning procedure, whereby the residents would have input, and the Planning Commission would have input. He clarified the ZBA was granting a use variance only if the conditions were met; and if the conditions were not met, there was no variance.

Mr. Robbins noted the parcel was zoned residential, and asked what type of buffering was required for

residential to residential. Ms. Millhouse stated no buffering was required between a single-family residence and a single-family residence. She noted if it were a church or some other use, then a buffer would be required.

Mr. Robbins asked what the requirements were for the applicant's situation. Ms. Millhouse stated it was her interpretation that if the use variance were granted for an office use, then the parameters of the office use would apply, which included a Type B buffer at minimum.

Mr. Robbins asked whether it was common for the ZBA to grant a use variance in accordance with a plan submitted by the applicant. Ms. Millhouse stated that use variances had been granted in the past that were site plan specific.

Chairperson Cockey noted the ZBA had not considered or granted very many use variances. Mr. Rosen stated he recalled a use variance in connection with the Softball City site. Ms. Millhouse noted 71 N. Livernois had received a use variance. Chairperson Cockey noted the 71 N. Livernois variance allowed use of an existing structure in a certain manner. Mr. Rosen stated the ZBA had granted the use variance with conditions, and then the project went to the Planning Commission for site plan approval. He indicated he was not sure it was the right direction for the ZBA to grant the applicant's request for a use variance conditioned on the Planning Commission.

Mr. Finsilver stated he had been trying to resolve this situation for two (2) years. He suggested if he were granted a use variance, he would arrange a meeting between Staff and the neighbors to ensure everyone understood what was required under the Ordinance; the neighbors could make their desires known, and all parties would work toward a mutual agreement. He indicated at that time site plan drawings would be prepared and submitted to the Planning Commission.

Chairperson Cockey suggested the Board take a short recess. He noted it did not appear the proposed motion would be unanimously approved, and questioned whether it would be more appropriate to table the motion on the floor, and present a motion to deny to be voted on. He noted if the request were denied, the previous discussion would become a moot point. He stated he had some comments he wanted to make regarding the merits of the variance.

Mr. Rosen stated he would prefer that the Board present the best motion they could prepare, that does the best the Board could do, and then allow the Members to decide by a vote. He did not feel it would be fair to the applicant to vote on a negative motion first. He pointed out if the proposed motion failed, then a motion to deny could be made.

Chairperson Cockey called for a ten (10) minute recess to allow two (2) or three (3) of the Board Members to draft a revised, more concise version of the proposed motion on the floor.

(Recess: 9:10 PM to 9:24 PM)

Chairperson Cockey called the meeting back to order. Mr. Rosen stated in response to the Chair's request for a specific written condition, he would offer the following for the Board's consideration:

Condition:

1. The Zoning Board of Appeals requires the applicant to submit a plan to the Planning Commission for site review and approval based on discussion with neighbors to achieve the most acceptable plan and arrangement, and in consultation with City Staff. If a site plan is not approved within one (1) year, this variance shall lapse.

Chairperson Cockey asked whether Mr. Colling and Mr. Robbins, as the maker and seconder of the proposed motion, would accept the proposed condition. Mr. Colling and Mr. Robbins stated they accepted the proposed condition to the motion.

Chairperson Cockey stated that the Staff Report contained a recommendation that a condition of approval be included with the motion stating that the applicant provide Type B screening consistent with the requirements of an O-1 Zoning District to protect the adjacent residentially zoned properties. He asked whether the motion maker and seconder would agree to adding that statement as a condition to the motion, or suggested a more exclusive condition that the property would have to meet all the requirements as if it were zoned an O-1 District.

Ms. Millhouse clarified that if the motion gave the Planning Commission site plan approval, including the Type B would provide a guide. She explained the second part of the Chair's suggestion would be more appropriate that the site plan be reviewed in accordance with the O-1 Zoning District. Mr. Colling agreed that would be the minimum.

Chairperson Cockey clarified the condition would read "reviewed to meet all the requirements of the O-1 Zoning District, at a minimum".

Mr. Weisberger requested clarification that the proposed motion had been seconded. Chairperson Cockey clarified the proposed motion had been seconded, and that the Board was now discussing conditions to be added to the proposed motion.

Mr. Weisberger asked the applicant the maximum number of parking spaces he needed. Mr. Finsilver stated his proposed plan contained eighteen (18) spaces. Mr. Weisberger suggested that since the Board was establishing maximums and minimums, a condition be added that "under no circumstances would the Planning Commission approve more parking spaces than those shown on the applicant's plan presented to the ZBA on February 23, 2004".

Chairperson Cockey clarified the condition would read that the use for up to a maximum of eighteen (18) parking spaces. Mr. Weisberger stated that did not mean that eighteen (18) spaces were acceptable, but that was the maximum number allowed.

Chairperson Cockey asked the motion maker and seconder if that additional condition was acceptable. Mr. Colling stated it was acceptable, but noted if the buffering for the O-1 Zoning District was applied, the applicant might not be allowed that many spaces. He clarified as long as the applicant understood the additional condition, it was acceptable to him.

Chairperson Cockey clarified the motion maker and seconder were agreeable to adding the condition that the site plan would be reviewed to meet all the requirements of the O-1 Zoning District at a minimum. Mr. Colling and Mr. Robbins both agreed to the addition of that condition.

Chairperson Cockey then called for discussion on the revised motion.

Mr. Weisberger stated he would like to provide the following comments for consideration during discussions between City Staff and the applicant:

- That no trash receptacle be located in the back.
- That it be emphasized that the ZBA discussed minimums when discussing the office.
- That the use of decorative fencing be reviewed.

That the parking spaces in the back be limited to employees only because employees would be less likely to go back and forth during the day. A sign at the entrance stating "employees only", might help to eliminate engines being started continually during the day.

Mr. Finsilver stated he did not have a problem with limiting the number of spaces, but noted too few spaces would not alleviate the problem. He referred to the condition indicating the variance would be void if the site plan was not approved within one (1) year. He indicated it was his intention to arrange a meeting with the neighbors as soon as possible. He questioned whether the condition could be worded such that if the parties involved were not accessible, he could work out the matter with City Staff.

Chairperson Cockey explained the way the motion was worded did not mean that people had a chance to comment on the plans and the applicant could proceed, but rather gave the applicant the opportunity to seek approval and agreement with the Planning Commission. He stated the ZBA was not guaranteeing that approval. He requested a clarification of the condition regarding the neighbors to determine whether the neighbors had a veto over the matter.

Mr. Colling explained the motion was worded such that the applicant would have to receive site plan approval from the Planning Commission. He noted that approval would not be given immediately, and it was not something the applicant would sit down with the neighbors to work out. He stated the applicant would have to prepare a formal plan and have it approved by the Planning Commission. He stated the neighbors were being given input to the plan through the Planning Commission, and the Planning Commission would be the final arbitrator of what the applicant could or could not do.

Chairperson Cockey stated he had some comments he wanted to make relative to whether a variance should be granted or not. He noted he had some serious reservations about the appropriateness of granting a use variance.

Chairperson Cockey stated according to the Ordinance there were seven (7) conditions that the ZBA must find. He indicated the first was that the property in question cannot be reasonably used and cannot yield a reasonable return on a prudent investment if the property would be only used for the purpose allowed in the zoning district. He commented that the Board was faced with a circumstance where a property owner purchased a piece of property which consisted of two parcels in terms of legal descriptions, but the applicant bought one contiguous piece of land in a single transaction in 1987. He noted the applicant bought the property knowing part of it was zoned residential and part was zoned commercial. He stated the applicant then proceeded to work with both the Planning Commission and the HDC, and noted the applicant deserved a lot of credit for the job he did to preserve the facade of the front building and for showing a willingness to work and maintain the historic structure. He indicated the applicant developed and extended the historic structure and added another structure on the property, and noted the applicant was not limited by the historical structure he had to begin with, but made his own choice about how much space he wanted to add, added another structure, determined how much space he wanted to use for parking, and went ahead with and successfully completed his project.

Chairperson Cockey stated the applicant's project appears to have been a relatively successful project over the last sixteen or seventeen years in that it was generally occupied, without a lot of vacancies. He noted the project had been so successful that the applicant now needed more parking spaces. He indicated he did not find that the applicant had not been able to make effective use of his property, and noted the applicant purchased the property with the feature of the R-3 zoning and worked around that. He stated this was not a case that the R-3 zoning had prevented the applicant from using the property, rather it was just a feature such as wetlands that had to be worked around.

Chairperson Cockey added that the ZBA was not permitted to pick and chose among the findings, but

rather all seven conditions had to be met to grant the variance. He stated the first finding appeared to be a major obstacle in the applicant's case.

Chairperson Cockey stated the second finding was that the plight is due to unique circumstances to the property, which he felt could be valid in the applicant's case.

Chairperson Cockey stated the third finding was that the variance would not alter the essential character of the area and locality. He indicated the way the applicant's parcel was zoned (with the front portion zoned office and the rear portion zoned residential) resulted in an essentially straight line from Hamlin Road up to the residential zoning to the north of the applicant's property for the rear boundary. He explained the parcel to the south had a rear boundary, which lined up the zoning, resulting in a nice straight division between residential zoning and office zoning. He stated it was conceivable that someone could assemble a significant portion of the residential lots and construct a subdivision. He noted granting the variance would certainly change the character of the area and the possibility of that happening by putting a "jog" into that area. He stated there was also a situation wherein the adjacent homeowners have had parking end at one place on the applicant's lot, and the request would move the parking back, creating an essential change. He explained this was not a situation whereby the adjacent homeowners did not want a parcel developed because it had been vacant, but homeowners that had checked and found that the parcel was zoned residential and could not be used for parking, etc.

Chairperson Cockey stated the fourth finding is that the problem is not self-created. He referred to his discussion regarding the first finding, which he felt could indicate the problem was self-created.

Chairperson Cockey stated the fifth, sixth and seventh findings related to the spirit of the chapter being observed, compliance with standards, and discretionary decisions, did not appear to present as much of a problem.

Chairperson Cockey stated this situation came down to the history of the applicant purchasing the property, successfully developing it, and now wanting to do something else. He stated he found it hard to support the issuance of a use variance, regardless of how stringent the conditions might be.

Mr. Colling referred to the Chair's comment about someone purchasing the end properties and developing a residential area, and stated it was not possible in the case of the applicant's property because it had been incorporated into the O-1. He noted the property could not be split again, and the applicant was losing a substantial property right if the variance were not granted. He pointed out the applicant owned the property and had a right to do something with it. He did not believe anyone would purchase the property and build a home on it, with just an easement as a driveway. He noted although a variance would somewhat change the character of the parcel from the standpoint that it would be a legal parking spot, he felt with the input of the neighbors and the stringent requirements of the Planning Commission, a site plan could be developed that would reasonably accommodate the parties.

Chairperson Cockey asked Staff if it would be possible for the applicant to make use of the portion of the parcel zoned residential by constructing a house on it which met the requirements of the residential zoning, or multiple houses, and leasing or renting those houses, as opposed to selling the property for someone to build a house on. Ms. Millhouse stated Staff had discussed that situation with the Building Department to clarify that point, and noted it appeared due to the fact it was one parcel and zoned single family, there could be a single family residence built on the rear portion, although the access would be through the office complex.

Chairperson Cockey asked whether it would be feasible to build a house and rent it out, noting not all homes in the City were occupied by their owners. Ms. Millhouse indicated it would be possible. She

pointed out, however, that according to the Land Division Act, it could not be a long-term lease because by definition that constitutes a land division. Chairperson Cockey questioned whether a month-to-month lease could be considered. Ms. Millhouse stated it could not be a lease for more than one (1) year.

Chairperson Cockey noted the Staff Report listed the subject site as being +/- .97 acres in an R-3 Zoning District, and questioned the minimum lot size and whether more than one house could be constructed on the parcel. Ms. Millhouse stated it was her interpretation that no more than one home could be constructed due to the fact the Ordinance required 12,000 square feet per lot. Chairperson Cockey verified one home could be constructed on the parcel. Ms. Millhouse stated that was her understanding.

Chairperson Cockey called for any additional discussion on the proposed motion on the floor. Upon hearing none, he called for a roll call vote.

Complete Motion as amended:

MOTION by Colling, seconded by Robbins, regarding File No. 03-015, that the request for a variance from Section 138-113 of Article III of the Code of Ordinances to allow parking in an R-3 Zoning District, on the parcel adjacent to 1812/1814 Rochester Road, located on the west side of Rochester Road, north of Hamlin Road, for use by the businesses adjacent to the parcel identified as Parcel Number 15-22-451-033, zoned R-3 (One Family Residential), be **GRANTED** with the following findings and conditions:

Findings:

1. The applicant has demonstrated that a reasonable return on a prudent investment cannot be realized from this parcel with the current zoning classification. In particular, the current location of the property makes it much less desirable as a residential property than the proposed use requested.
2. The applicant has demonstrated that a unique circumstance peculiar to the subject property prevents the allowable uses prescribed in a R-3 zoning district. Specifically, the parcel in question would not be viable as an R-3 building site due to access restrictions.
3. The ZBA finds that the granting of this variance would not alter the essential character of the area and locality. Specifically, the applicable ordinance would apply regarding separation of residential from commercial property, and if followed would provide relief with the necessary separation of the commercial and residential property.
4. The ZBA finds that the applicant's request is not self-created based on his desire to incorporate a non-permitted use within the R-3 zoning district.
5. The ZBA finds that the granting of this variance would not negatively impact the spirit of the Ordinance by allowing an O-1 parking use within an R-3 zoning district. Specifically, the property is landlocked and similar conditions are not likely to be encountered within the City.
6. There is compliance with Section 138-109 (Jurisdiction) that the proposed variance will not impair an adequate supply of light, etc., and would not represent a specific health and/or safety issue as long as all applicable Ordinances regarding separation of commercial and residential property are adhered to.

Conditions:

1. The Zoning Board of Appeals requires the applicant to submit a plan to the Planning Commission for site review and approval based on discussion with neighbors to achieve the most acceptable plan and arrangement, and in consultation with City Staff. If a site plan is not approved within one (1) year, this variance shall lapse.
2. The applicant's site plan shall be reviewed by the Planning Commission to ensure it meets all the requirements of the O-1 Zoning District, at a minimum.

Roll Call Vote:

Ayes: Weisberger, Robbins, Colling
Nays: Verschueren, Brennan, Cockey, Rosen,
Absent: None

MOTION FAILED

Chairperson Cockey stated the motion had not been approved, and noted for the record that a use variance required a concurring vote of five (5) Members of the Board.

Mr. Rosen proposed the following motion for consideration by the Board:

MOTION by Rosen, regarding File No. 03-015, that the request for a use variance pursuant to Section 138-113 of Article III of the Code of Ordinances to allow parking in an R-3 Zoning District, on the parcel adjacent to 1812/1814 Rochester Road, located on the west side of Rochester Road, north of Hamlin Road, for use by the businesses adjacent to the parcel identified as Parcel Number 15-22-451-033, zoned R-3 (One Family Residential), be **DENIED** with the following findings:

Findings:

1. The applicant has not demonstrated that a reasonable return on a prudent investment cannot be realized for this parcel and zoning classification. In particular, the applicant knew the circumstances with this and the office property when purchased and during the site plan approval process.
2. The applicant has not demonstrated that a unique circumstance particular to the subject property prevents the allowable uses prescribed in an R-3 Zoning District.
3. The Zoning Board of Appeals finds that granting of this variance will alter the essential character of the area and locality. Specifically, it will adversely affect neighbors to the north.
4. The Zoning Board of Appeals finds the applicant's request is self-created, specifically because the applicant knew this was an isolated parcel at the time of purchase.
5. The granting of this variance will not promote the intent and purpose of the Ordinance to restrict the granting of use variances to extraordinary circumstances.

Chairperson Cockey asked for a second to the proposed motion. Mr. Verschueren stated he would second the motion. Chairperson Cockey called for discussion on the proposed motion on the floor.

Mr. Robbins stated he did not understand the Board taking the time to prepare such a specific motion to approve, just to have the motion denied. He stated if the applicant was being taxed at a commercial rate, he should be entitled to use his land in that manner. He referred to the variance granted with respect to

71 N. Livernois, and noted in that case, the matter was postponed to allow the City Attorney the opportunity to prepare specific conditions. He stated the parcel was landlocked and could not be developed as residential, and he felt the Board was denying the applicant the right to use his property. He felt allowing the Planning Commission to review the plan, would provide the best win-win situation by protecting the residents and allowing the applicant to use the property. He noted the Planning Commission would not consider the matter lightly.

Chairperson Cockey called for any additional discussion. Upon hearing none, he requested a roll call vote on the motion on the floor.

Complete Motion:

MOTION by Rosen, seconded by Verschueren, regarding File No. 03-015, that the request for a use variance pursuant to Section 138-113 of Article III of the Code of Ordinances to allow parking in an R-3 Zoning District, on the parcel adjacent to 1812/1814 Rochester Road, located on the west side of Rochester Road, north of Hamlin Road, for use by the businesses adjacent to the parcel identified as Parcel Number 15-22-451-033, zoned R-3 (One Family Residential), be **DENIED** with the following findings:

Findings:

1. The applicant has not demonstrated that a reasonable return on a prudent investment cannot be realized for this parcel and zoning classification. In particular, the applicant knew the circumstances with this and the office property when purchased and during the site plan approval process.
2. The applicant has not demonstrated that a unique circumstance particular to the subject property prevents the allowable uses prescribed in an R-3 Zoning District.
3. The Zoning Board of Appeals finds that granting of this variance will alter the essential character of the area and locality. Specifically, it will adversely affect neighbors to the north.
4. The Zoning Board of Appeals finds the applicant's request is self-created, specifically because the applicant knew this was an isolated parcel at the time of purchase.
5. The granting of this variance will not promote the intent and purpose of the Ordinance to restrict the granting of use variances to extraordinary circumstances.

Roll Call Vote:

Ayes: Brennan, Cockey, Verschueren, Rosen
 Nays: Colling, Weisberger, Robbins
 Absent: None

MOTION CARRIED

Chairperson Cockey stated the motion to deny had carried, and indicated the applicant could appeal the Board's decision to Circuit Court.

8. PUBLIC HEARING – FILE #97-004

Location: 3050 Bendelow, located east of Rochester Road, north of M-59, Parcel Number 15-35-203-001, zoned R-3 (One Family Residential), and known as Country Club Village.
 Request: A request for a temporary permit beyond the 60 days granted by the Building