

ROYAL OAK ZONING BOARD OF APPEALS  
CITY OF ROYAL OAK, MICHIGAN

Thursday, October 10, 2019  
7:00 P.M.

**Present**

Leslie Anderson  
Paul Curtis  
Clyde Esbri, Chairperson  
Jeff Klatt  
Alan Kroll  
Anthony Offak, Vice Chairperson  
Nancy Robinson  
Deborah Zukin

**Absent**

Robert Gavin

Joseph M. Murphy, Director of Planning  
Julianna Tschirhart, Planner  
Ryan Kaluzny, Assistant City Attorney

**Agenda**

**A. Call to Order**

**B. Approval of Minutes for September 12, 2019**

**C. Old / Unfinished Business**

1. **Case No. 19-09-33** – public hearing on the appeal of Mike Daubenmire, Fortune Wireless, petitioner, & AT&T, owner, for the following variances:
  - (a) waive 193.9 ft. of the minimum required 250 ft. setback from a public right-of-way (E. 4th St.)
  - (b) waive 30 ft. of the minimum required 250 ft. setback from a residential zone district to permit construction of a 250 ft. wireless communication support structure within an off-street parking lot at **421 S. Williams St.** (25-22-109-004).

**D. New Business**

1. **Case No. F-19-10-06** – public hearing on the appeal of Mario Cabrejo, petitioner & owner, for the following variance:
  - (a) waive 2 ft. of the maximum permitted 4 ft. fence height within a front yard setback along S. Minerva Ave.  
to retain a 6 ft. sight obscuring wood fence within a front yard setback at **724 S. Minerva Ave.** (25-23-160-027).
2. **Case No. F-19-10-07** – public hearing on the appeal of John Farhat, petitioner & owner, for the following variances:
  - (a) waive 2 ft. of the maximum permitted 4 ft. fence height within a front yard setback along Murdock Ave.
  - (b) waive the design requirement prohibiting the use of sharp or pointed material in connection with the construction of a fence or privacy screen in a residential district to permit construction of a non-sight obscuring 6 ft. aluminum fence with spear top pickets within a front yard setback at **2209 Vinetta Blvd.** (25-09-331-001).
3. **Case No. 19-10-37** – public hearing on the appeal of Marusich Architecture, petitioner, & Woodgal, LLC, owner, for the following variance:
  - (a) waive the minimum required 150 ft. setback from a residential zone to permit construction of a mixed-use building with ground-level medical office space and 24 upper-level multiple-family dwelling units at **4710 Rochester Rd.** (25-03-201-023).

4. **Case No. 19-10-38** – public hearing on the appeal of Christopher Adams, petitioner & owner, for the following variances:
  - (a) alter / expand a nonconforming use
  - (b) waive 288.6 sq. ft. of the maximum allowable 621.4 sq. ft. accessory structure ground floor area
  - (c) waive 4.6% of the maximum allowable lot coverage of 10% for an accessory structure
  - (d) waive 2.6% (161.1 sq. ft.) of the maximum allowable lot coverage of 30% to permit construction of a new 910 sq. ft. accessory structure / garage at **212 N. Edgeworth Ave.** (25-14-377-007).
  
5. **Case No. 19-10-39** – public hearing on the appeal of Inn Season Properties, LLC, petitioner & owner, for the following variances:
  - (a) waive screening enclosure for refuse and recyclable containers
  - (b) waive hard-surfacing requirement for driveway, loading area, and refuse receptacle storage area to permit expansion of a restaurant at **500 E. 4<sup>th</sup> St.** (25-22-133-034).

**E. Other Business**

**F. Public Comment**

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**Call to Order**

The meeting was called to order at 7:00 p.m. by Chairperson Esbri. He informed the audience that the board does not write the zoning ordinance but does have the authority to grant relief from it where practical difficulty or unnecessary hardship would result. He stated the board will vote on each agenda item following a public hearing. Use variance requests require a minimum of 6 affirmative votes in order to grant the requested variances. Non-use variance requests require a minimum of 5 affirmative votes in order to grant the variances. Petitioners were directed to limit their presentations to 10 minutes and that each participant in a public hearing limit their comments to 3 minutes. He further pointed out to petitioners the absence of a full board at tonight's meeting and their opportunity to request that their agenda item be postponed until the next regular meeting due to the circumstances.

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**Approval of Minutes for September 12, 2019**

Moved by: Mr. Kroll  
Supported by: Mr. Klatt

Moved, that the minutes of the September 12, 2019 regular meeting be approved as presented.

Motion adopted unanimously.

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**Old / Unfinished Business**

**1. Case No. 19-09-33 – 421 S. Williams St. (25-22-109-004)**

The petitioner submitted a written request to postpone the item until the next regularly scheduled meeting to allow their site plan to be approved by the Planning Commission before proceeding.

Moved by: Mr. Kroll  
Supported by: Mr. Curtis

Moved, that the appeal of Mike Daubenmire, Fortune Wireless, petitioner, & AT&T, owner, for the following variances:

- (a) waive 193.9 ft. of the minimum required 250 ft. setback from a public right-of-way (E. 4<sup>th</sup> St.)
- (b) waive 30 ft. of the minimum required 250 ft. setback from a residential zone district to permit construction of a 250 ft. wireless communication support structure within an off-street parking lot at 421 S. Williams St., be **postponed**.

Motion adopted unanimously.

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## New Business

### 1. Case No. F-19-10-06 – 724 S. Minerva Ave. (25-23-160-027)

Moved by: Mr. Kroll  
Supported by: Mr. Offak

Moved, that the appeal of Mario Cabrejo, petitioner & owner, for the following variance:  
(a) waive 2 ft. of the maximum permitted 4 ft. fence height within a front yard setback along S. Minerva Ave.  
to retain a 6 ft. sight obscuring wood fence within a front yard setback at 724 S. Minerva Ave., be **granted**.

Motion adopted 5-3 (Mrs. Anderson, Mr. Offak, Mrs. Zukin).

Granting the variance is based upon the following:

1. Practical difficulties exist in strict compliance with the Fence Ordinance provisions.
2. Granting the variance will do substantial justice to the petitioner and will not prove detrimental to other property owners in the area.
3. Granting the variance is done in light of public health, safety, and welfare concerns.

### 2. Case No. F-19-10-07 – 2209 Vinsetta Blvd. (25-09-331-001)

The Board elected to vote on the two variance requests separately.

Moved by: Mr. Offak  
Supported by: Mr. Kroll

Moved, that the appeal of John Farhat, petitioner & owner, for the following variance:  
(a) waive 2 ft. of the maximum permitted 4 ft. fence height within a front yard setback along Murdock Ave.  
to permit construction of a non-sight obscuring 6 ft. fence within a front yard setback at 2209 Vinsetta Blvd. (25-09-331-001), be **granted**.

Motion adopted 6-2 (Mrs. Anderson, Mrs. Zukin).

Granting the variance is based upon the following:

1. Practical difficulties exist in strict compliance with the Fence Ordinance provisions.
2. Granting the variance will do substantial justice to the petitioner and will not prove detrimental to other property owners in the area.
3. Granting the variance is done in light of public health, safety, and welfare concerns.

Moved by: Mr. Kroll  
Supported by: Mr. Curtis

Moved, that the appeal of John Farhat, petitioner & owner, for the following variance:  
(b) waive the design requirement prohibiting the use of sharp or pointed material in connection with the construction of a fence or privacy screen in a residential district to permit construction of a non-sight obscuring 6 ft. fence within a front yard setback at 2209 Vinsetta Blvd. (25-09-331-001), be **denied**.

Motion adopted 7-1 (Mr. Offak).

Denying the variance is based upon the following:

1. The petitioner has failed to demonstrate that practical difficulties exist in strict compliance with the Fence Ordinance provisions.
  2. Denying the variance will not prove detrimental to the petitioner.
  3. Denying the variance is done in light of public health, safety, and welfare concerns.
- 3. Case No. 19-10-37 – 4710 Rochester Rd. (25-03-201-023)**

Moved by: Mr. Offak  
Supported by: Mrs. Zukin

Moved, that the appeal of Marusich Architecture, petitioner, & Woodgal, LLC, owner, for the following variance:  
(a) waive the minimum required 150 ft. setback from a residential zone to permit construction of a mixed-use building with ground-level medical office space and 24 upper-level multiple-family dwelling units at 4710 Rochester Rd., be **denied**.

Motion adopted 5-3 (Mr. Esbri, Mr. Klatt, Mrs. Robinson).

Denying the variance is based upon the following:

1. Strict compliance with the zoning ordinance provisions will not unreasonably prevent the petitioner from use and enjoyment of the property for a permitted purpose, or would not render conformity with such provisions unnecessarily burdensome.
  2. Granting the variances would prove detrimental to other property owners in the area.
  3. There are not circumstances or conditions inherently unique to the property that necessitates granting the variances.
  4. There is not evidence of practical difficulty and there are not inherently unique circumstances or conditions of the property that requires granting the variances.
- 4. Case No. 19-10-38 – 212 N. Edgeworth Ave. (25-14-377-007)**

Moved by: Mr. Kroll  
Supported by: Mr. Curtis

Moved, that the appeal of Christopher Adams, petitioner & owner, for the following variances:  
(a) alter / expand a nonconforming use  
(b) waive 288.6 sq. ft. of the maximum allowable 621.4 sq. ft. accessory structure ground floor area  
(c) waive 4.6% of the maximum allowable lot coverage of 10% for an accessory structure

(d) waive 2.6% (161.1 sq. ft.) of the maximum allowable lot coverage of 30% to permit construction of a new 910 sq. ft. accessory structure / garage at 212 N. Edgeworth Ave., be **granted**.

Motion adopted 6-2 (Mrs. Anderson, Mr. Offak).

Granting the variances is based upon the following:

1. Strict compliance with the zoning ordinance provisions will unreasonably prevent the petitioner from use and enjoyment of the property for a permitted purpose, or would render conformity with such provisions unnecessarily burdensome.
2. Granting the variances will do substantial justice to the petitioner and will not prove detrimental to other property owners in the area, and is the least relief required in order to afford substantial justice to the petitioner or be more consistent with justice to nearby property owners.
3. There are circumstances or conditions inherently unique to the property that necessitates granting the variances.
4. There is evidence of practical difficulty that has not been created by the petitioner and/or property owner but instead results from the inherently unique circumstances or conditions of the property that requires granting the variances.

It is further the finding of the board that the spirit of the zoning ordinance will be observed, public safety secured, and substantial justice rendered by granting the variances.

**5. Case No. 19-10-39 – 500 E. 4<sup>th</sup> St. (25-22-133-034)**

Moved by: Mrs. Anderson  
Supported by: Mr. Kroll

Moved, that the appeal of Inn Season Properties, LLC, petitioner & owner, for the following variances:  
(a) waive screening enclosure for refuse and recyclable containers  
(b) waive hard-surfacing requirement for driveway, loading area, and refuse receptacle storage area to permit expansion of a restaurant at 500 E. 4th St., be **granted**.

Motion failed 4-4 (Mr. Klatt, Mr. Offak, Mrs. Robinson, Mr. Curtis).

Moved by: Mr. Offak  
Supported by: Mr. Kroll

Moved, that the appeal of Inn Season Properties, LLC, petitioner & owner, for the following variance:  
(b) waive hard-surfacing requirement for driveway, loading area, and refuse receptacle storage area to permit expansion of a restaurant at 500 E. 4th St., be **granted**.

Motion adopted unanimously.

Granting the variance is based upon the following:

1. Strict compliance with the zoning ordinance provisions will unreasonably prevent the petitioner from use and enjoyment of the property for a permitted purpose, or would render conformity with such provisions unnecessarily burdensome.
2. Granting the variances will do substantial justice to the petitioner and will not prove detrimental to other property owners in the area, and is the least relief required in order to

afford substantial justice to the petitioner or be more consistent with justice to nearby property owners.

3. There are circumstances or conditions inherently unique to the property that necessitates granting the variances.
4. There is evidence of practical difficulty that has not been created by the petitioner and/or property owner but instead results from the inherently unique circumstances or conditions of the property that requires granting the variances.

It is further the finding of the board that the spirit of the zoning ordinance will be observed, public safety secured, and substantial justice rendered by granting the variances.

Moved by: Mr. Offak  
Supported by: Mr. Curtis

Moved, that the appeal of Inn Season Properties, LLC, petitioner & owner, for the following variance:  
(a) waive screening enclosure for refuse and recyclable containers to permit expansion of a restaurant at 500 E. 4th St., be **denied**.

Motion adopted 5-3 (Mrs. Anderson, Mr. Klatt, Mr. Kroll).

Denying the variance is based upon the following:

1. Strict compliance with the zoning ordinance provisions will not unreasonably prevent the petitioner from use and enjoyment of the property for a permitted purpose, or would not render conformity with such provisions unnecessarily burdensome.
2. Granting the variances would prove detrimental to other property owners in the area.
3. There are not circumstances or conditions inherently unique to the property that necessitates granting the variances.
4. There is not evidence of practical difficulty and there are not inherently unique circumstances or conditions of the property that requires granting the variances.

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#### Other Business

##### 1. Meeting Schedule & Religious Holidays for 2020

Moved by: Mr. Offak  
Supported by: Mr. Kroll

Be it resolved, that the Royal Oak Zoning Board of Appeals, after reviewing the materials presented, hereby affirms its meeting date and time for 2020 as being that established in its adopted rules of procedure, the second Thursday of the month at 7 p.m., with the exception of the April 2020 meeting date, which will be rescheduled from April 9<sup>th</sup> to April 2<sup>nd</sup> so as not to conflict with religious holidays.

Motion adopted unanimously.

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#### Public Comment

None.

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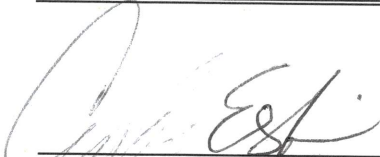
**Adjournment**

Moved by: Mr. Kroll  
Supported by: Mrs. Anderson

Moved, that the meeting adjourned at 9:59 p.m.

Motion adopted unanimously.

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Clyde Esbri, Chairperson

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Joseph M. Murphy, Director of Planning