



Rochester Hills

Minutes - Draft

Zoning Board of Appeals

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Rochester Hills, MI
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Chairperson Ernest Colling, Jr.; Vice Chairperson Kenneth Koluch
Members: Deborah Brnabic, Bill Chalmers, Jayson Graves, Dale A. Hetrick, Charles Tischer

Wednesday, October 24, 2018

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Ernest Colling called the Special Meeting to order at 7:00 p.m. in Conference Room 221.

ROLL CALL

Present 7 - Deborah Brnabic, Bill Chalmers, Ernest Colling, Jayson Graves, Dale Hetrick, Kenneth Koluch and Charles Tischer

Quorum present.

Also present: Kristen Kapelanski, Manager of Planning
Sandi DiSipio, Recording Secretary
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

[2018-0448](#) May 9, 2018 Regular Meeting Minutes

A motion was made by Koluch, seconded by Brnabic, that this matter be Approved as Presented. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Graves, Hetrick, Koluch and Tischer

COMMUNICATIONS

A) *Planning & Zoning News dated May to October 2018*

Ms. Kapelanski announced that it would be Ms. DiSipio's last meeting as she would be retiring in December. She introduced Ms. Maureen Gentry from the Planning Department who would take over the Recording Secretary role beginning with the next ZBA meeting.

PUBLIC COMMENT

Chairperson Colling opened Public Comment for non-agenda items at 7:05 p.m. Seeing no one come forward, he closed Public Comment.

NEW BUSINESS

2018-0441

PUBLIC HEARING - FILE NO. 18-019

Location: 3079 Eastwood Dr., located on the east side of Eastwood Dr., south of Auburn Rd. and north of Dunning Rd., Parcel Identification Number 15-31-128-023, and zoned R-4 (One Family Residential).

Request: A request for a variance of 1.3 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum side yard setback of 10 feet in the R-4, One Family Residential Zoning District. Submitted plans for a proposed lot split indicate a side yard setback of 8.7 feet to the existing house.

Applicant: John Lipka
3079 Eastwood Dr.
Rochester Hills, MI 48309

(Reference: Staff Report prepared by Ms. Kapelanski dated October 19, 2018 and various application documents had been placed on file and became part of the record thereof).

Present for the applicant was John Lipka, 3079 Eastwood Dr., Rochester Hills, MI 48309.

Mr. Lipka noted that when he and his wife purchased the property, there had been an addition to the south side of the home. He pointed out that the homes across the street were built almost on the lot line, and that his lot fit every other lot in the area. He had talked with the neighbors, and they were okay with the split. Some said that the lot looked off having a home to one side. He noted that it was almost an acre, and with a split, there would be almost two half-acre lots. He realized that the side yard setback would only be 8.7 feet; however, he claimed that the house to the south was less than ten feet from his lot line. He felt that splitting the lot would fit the neighborhood, although he understood that the other homes with setbacks less than ten feet might have been grandfathered.

Chairperson Colling asked the reason for the split. Mr. Lipka said that he would eventually like to build on the vacant lot. They were fixing up the existing house, and they might end up living in it. They sold their home on Devondale, and the home they were going to buy fell through, so they might live there and eventually build on the other lot.

Chairperson Colling asked Mr. Lipka when he purchased the home. Mr. Lipka advised that it was May 2, 2018. Chairperson Colling asked if they had done any due diligence at that time to review the situation. Mr. Lipka

said that when he looked at purchasing the home, he looked at the zoning. When he read the Ordinance, he thought it said that for a lot 60 feet wide or less, the side yard could be five feet on one side and ten on the other for a total of 15. He discovered during the lot split process that it actually read for a lot "less than 60 feet," so he had misinterpreted.

Chairperson Colling said that it was his understanding that the minimum lot width in Rochester Hills was 60 feet for R-4. Ms. Kapelanski said that was correct. She noted that there were some existing lots less than 60 feet wide, particularly in the southern portion of the City. Chairperson Colling advised that they were allowed per a court order. Ms. Kapelanski explained that for platted lots less than 60 feet wide, if the home was torn down, the owner could rebuild using the reduced setbacks of ten and five. Chairperson asked Ms. Kapelanski to present the staff report.

Ms. Kapelanski stated that the applicant wished to split the subject parcel into two 60-foot wide lots, which would conform to the standards of the R-4 district. There was an existing house on the property, and it would result in the southern side yard setback being deficient by 1.3 feet. The applicant had submitted an aerial photo identifying some other properties in the neighborhood that appeared to have deficient setbacks. Staff did a brief review of some of the other properties and some approximate measurements and confirmed that. Most of the houses in the area were built before the City had Zoning Ordinance standards in place. At one point, she advised, the subject lot had been platted as two lots and sometime in the 1970's, the properties were combined. Assessing had no records of whether the combination was initiated by the owners or the City; the City had a policy at one time of combining lots that were under common ownership.

Chairperson Colling had confirmed, through research, that 66% of the homes in the area were built before Avon Township had a Zoning Ordinance. That went up to the early 1950's, and the City prepared a Zoning Ordinance in the late 1950's. He looked at Variances that had been granted for the area. When Avon Township was first formed, there were few, if any, restrictions regarding Variances granted (he had asked Ms. DiSipio to copy some, which he passed around). From 1945 until approximately 1960, there were no regulations he could find regarding setbacks. He believed that the property in question was built as it was on a 60-foot wide lot, and his assumption was that the home was originally a little smaller. There was an addition to the south side of the home, which pushed it closer to the side lot line. It was his impression that the property (initially two lots) had been owned by the first owner since 1945. In a 1971

Assessor's log, two lots were listed, and in 1978, when a deed was applied for by a new owner, it was one lot. With one sidwell number in 1978, he assumed that both lots were combined by a new owner. He recapped that in 2018, the applicant bought the property and wanted to split it. Though there had been houses that had encroached on lot lines, it had not been the practice of the ZBA to grant a Variance for a split property that would be nonconforming. If the lot split was approved, it would create a nonconforming structure unless a Variance was granted. It was his personal feeling that it was somewhat of a self-created situation by the desire of the applicant to split the property. It was not the fault of the City. Unfortunately, it was purchaser's duty to do due diligence and investigate everything prior to purchasing. Other than the desire to split the property into two lots for whatever purpose, there was really no justification of a physical hardship or engineering reason to do so. He recalled reading about a side yard Variance granted in 1996 due to a drainage issue. He did not see a stated physical or engineering hardship associated with the subject home. It had existed since 1945 and had an addition, and that addition made it come too close to the lot line for a lot split.

Mr. Chalmers asked Ms. Kapelanski to clarify setbacks for homes on smaller lots. Ms. Kapelanski explained that there were some lots in the City that were platted at less than 60 feet wide. Someone could build new on one of those lots, and a reduced side yard setback would be allowed in that case. A five-foot relief would be given because of the narrowness of the lot, but that was only for lots that had been platted at less than 60 feet wide. Mr. Chalmers concluded that the subject lot could not be split into one 70-foot and one 50-foot lot, for instance, and have a reduced setback for the smaller one.

Mr. Chalmers observed that no taxes had been paid on the property in 2016 and 2017, and he asked Mr. Lipka if he knew why. Mr. Lipka was not aware of that, and his title work had showed nothing. Mr. Chalmers said that Mr. Lipka bought the property thinking that he might split it and live in the existing house. Since he already sold his Devondale house, Mr. Chalmers wondered where he was living currently. Mr. Lipka said that he lived in River Oaks Apartments. He stated that it was the first house they bought to rehab. He and his wife wanted to get into real estate, and he thought that the lot could be split.

Chairperson Colling asked if the subject home was being lived in at all. Mr. Lipka said that it was not; they were fixing it. Chairperson Colling said that theoretically, if they were going to rehab the house, they had the ability to change the structure of the home to make it conforming. Mr.

Lipka said that it had a basement right there. He felt that the home was actually older than 1945. The basement had a block wall, and the addition was outside of that wall. Chairperson Colling asked the current condition of the home. Mr. Lipka said that it was pretty good. Chairperson Colling asked why he was not living in it if it was livable. Mr. Lipka said that he had to add faucets, and only one toilet ran, and they were fixing the bathrooms.

Ms. Brnabic asked if he planned to occupy the house once it was renovated. Mr. Lipka said that the original plan was to sell it, if he could find another home for them. Ms. Brnabic asked if there had ever been a Variance granted in the area for a lot split. Ms. DiSipio responded that there had not.

Chairperson Colling pointed out that it was not a situation where Mr. Lipka was renovating the home to live in; he had stated that he wanted to sell the house and the lot, so it was an investment property. Chairperson Colling indicated that he could not grant a Variance for an investment property. That was not something the ZBA was allowed to do. They were not allowed to look at monetary value or something that enhanced the monetary value in terms of a Variance, and that was not a reason to grant one.

Mr. Hetrick said that he agreed with that. If the objective was to turn it into an investment property, the Board could not grant a Variance without a hardship. Chairperson Colling added that it became self-created by the applicant's desire to profit from the property. He said that Variances for a side yard almost always had been the result of additions to existing properties that were already nonconforming. He recalled two Variances that had been granted for homes that had additions where the homes already had a five-foot side yard setback, and the Variances were granted so the additions would match. Mr. Hetrick presumed that those Variances were granted when there was no Zoning Ordinance.

Chairperson Colling said that the subject request was not unique from other circumstances within the City. It was a situation where the applicant did not plan to live in the home, and he planned to flip the property, and Chairperson Colling did not think that was a good reason for granting a Variance.

Mr. Lipka said that he had talked to the neighbors, and there was a home three doors down where a lady had tried to split, and she was told no. The house burnt down, and someone else bought the property, and the new

person was allowed to split it, and no one could figure out why. He did not know if there had been a Variance. Chairperson Colling said that staff's research did not indicate anything. If Mr. Lipka was building on the property and there was a practical difficulty, he considered that it might possibly warrant a Variance, but it was a speculative sale issue and not grounds for a Variance.

Mr. Koluch asked if there had been any other denials for lot splits in the area. Ms. Kapelanski did not see many other double lots in the area, but there were none that she knew.

Chairperson Colling said that while he was sure that splitting the subject lot would maximize Mr. Lipka's profit margin, unless the existing home was modified to meet the setback, he was not inclined to grant a Variance because it would give an unfair advantage over others in the City who wanted to do the same thing and were not allowed.

Ms. Brnabic stated that she absolutely agreed with Chairperson Colling. If the Variance was approved under the circumstances and without having another Variance granted in the area for a lot split, it would create a precedent for other areas. Someone else could use this case to attempt a similar request.

Mr. Hetrick said that nonconforming lots had been mentioned, but he wondered if Mr. Lipka would have an opportunity to come before the ZBA for a nonconforming lot width. Ms. Kapelanski said that he could ask for a lot-width Variance to have 61-foot and a 59-foot widths. Chairperson Colling said that he could modify the existing home, too. Or, he could sell the property "as is." He could demolish the smaller one and build a bigger one. Older homes had been torn down and larger homes put up in their place in a lot of neighborhoods. There were all kinds of scenarios that could happen without having to get a Variance. Mr. Hetrick said that he was just considering whether there was some opportunity for the applicant beyond the request, given the direction the Board was heading, which was likely to deny.

Ms. Kapelanski advised that the applicant would have to submit a new survey with a new proposed lot split (to consider a different Variance), and they would end up in the same place. Mr. Hetrick agreed that there still might not be a practical difficulty even with another opportunity.

Mr. Koluch said that he was concerned about the fact that being an investment property was one of the primary reasons for denial. He asked

if the applicant had not said it was an investment property if it would change anyone's mind. He asked if the residence of the applicant really made that big of a difference, since he purchased the property with plans to sell it.

Chairperson Colling noted that the property was purchased in 2018. It was up to the applicant to do due diligence and make sure the situation was understood. Also, the property in and of itself had no practical difficulty that would require a Variance for a split. He could not even imagine a Variance that would be required to split a property. Mr. Koluch asked if the applicant moved into the home and came back before the ZBA in a year if it could get approved. Chairperson Colling said it could not, because there was no practical difficulty. Mr. Koluch asked if they needed to add the fact that it was an investment property. Chairperson Colling said that the applicant's stated reason for the Variance was because he wanted to split the property and sell. Chairperson Colling had pointed out that the Board did not grant Variances for that reason, nor could they even consider it. Aside from that, there was no practical difficulty that would justify a Variance. Mr. Hetrick said that was how he felt, regardless of whether it was an investment property or not. Chairperson Colling recalled that the ZBA had denied Variances for as little as a foot into the setback in other cases.

MOTION by Koluch, seconded by Brnabic, in the matter of File No. 18-019, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a variance of 1.3 feet, Parcel Identification Number 15-31-128-023, zoned R-4 (One Family Residential), be **DENIED** because a practical difficulty does not exist on the property as demonstrated in the record of proceedings and based on the following findings:

Findings:

- 1. Compliance with the strict letter of the restrictions governing the minimum side yard setback will not prevent the owner from using the property for a permitted purpose in a reasonable manner, and will not be unnecessarily burdensome.*
- 2. Granting the variance will not do substantial justice to nearby property owners as it will allow a structure closer to the side property line than other lots. Thus, the variance would confer a special benefit on the applicant that is not enjoyed by neighboring property owners.*

3. *There are no unique circumstances of the property that necessitate granting the variance.*
4. *The circumstances are self-created by the applicant in the form of their desire to divide the existing parcel.*
5. *The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future.*
6. *The granting of this variance could encourage further incursions upon the Zoning Ordinance which would result in further variances being considered by the Zoning Board of Appeals and could be construed as removing the responsibility of meeting the Zoning Ordinance from applicants and those wishing to divide similar lots within the City.*
7. *The granting of this variance would be materially detrimental to the public welfare or existing or future neighboring uses.*

A motion was made by Koluch, seconded by Brnabic, that this matter be Denied. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Graves, Hetrick, Koluch and Tischer

Chairperson Colling stated for the record that the motion had passed.

ANY OTHER BUSINESS

Ms. DiSipio noted that there would not be a November meeting, and she asked if the Board could approve the 2019 meeting schedule.

MOTION by Hetrick, seconded by Tischer, the Zoning Board of Appeals hereby approves the 2019 meeting schedule at its October 24, 2018 Special Meeting as follows:

<i>January 9, 2019</i>	<i>July 10, 2019</i>
<i>February 13, 2019</i>	<i>August 14, 2019</i>
<i>March 13, 2019</i>	<i>September 11, 2019</i>
<i>April 10, 2019</i>	<i>October 9, 2019</i>
<i>May 8, 2019</i>	<i>November 13, 2019</i>
<i>June 12, 2019</i>	<i>December 11, 2019</i>

Voice Vote:

Ayes: All
Nays: None
Absent: None

MOTION CARRIED

Chairperson Colling stated for the record that the motion had carried.

NEXT MEETING DATE

Chairperson Colling reminded the ZBA Board that the next Regular Meeting was scheduled for December 12, 2018 (subsequently, that meeting and the January 9, 2019 meeting were cancelled).

ADJOURNMENT

The Board wished Ms. DiSipio well in retirement, and hearing no further business to come before the Zoning Board of Appeals, Chairperson Colling adjourned the Special Meeting at 7:43 p.m.

Ernest W. Colling, Jr., Chairperson
Rochester Hills
Zoning Board of Appeals

Maureen Gentry, Recording Secretary