



Rochester Hills

Minutes

Zoning Board of Appeals

1000 Rochester Hills Dr
Rochester Hills, MI
48309
(248) 656-4600
Home Page:
www.rochesterhills.org

Chairperson Ernest Colling, Jr.; Vice Chairperson Kenneth Koluch
Members: Deborah Brnabic, Bill Chalmers, Dane Fons, Dale A. Hetrick, Michael McGunn

Wednesday, January 11, 2017

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Colling called the Regular Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 5 - Deborah Brnabic, Bill Chalmers, Ernest Colling, Dale Hetrick and Kenneth Koluch

Absent 2 - Dane Fons and Michael McGunn

*Also Present: Ed Anzek, Director of Planning
Craig McEwen, Plan Examiner/Building Inspector
Sandi DiSipio, Recording Secretary*

COMMUNICATIONS

Planning & Zoning News - November 2016 edition

PUBLIC COMMENT for Items not on the Agenda

No public comment was heard on non-agenda items. Chairperson Colling read two emails into the record from Kirsten Hydorn and Amy Garabedian, representatives of two nearby businesses, relative to the public hearing for File No #16-033 - 2201 Crooks Road. Both emails were opposed to the request of an appeal of staff's determination that a proposed crematorium facility is not a permitted use by the City's Ordinance.

NEW BUSINESS

[2017-0006](#)

PUBLIC HEARING - FILE NO. 16-032

Location: 3971 Piccadilly Dr., located on the north side of Piccadilly Dr., west of Adams Rd., north of Hamlin Rd., Parcel Identification Number 15-19-328-028, and zoned R-2 (One Family Residential).

Request: A request for a variance of 6.58 feet from Section 138-5.101 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum rear yard setback of 35 feet in the R-2, One Family Residential Zoning District. The proposed accessory structure is within 10 feet of the existing house, is considered attached to the house, and per Section 138-10.101,A.2., is

subject to the regulations applicable to the house. Submitted plans indicate an accessory structure with a 28.42 foot rear yard setback.

Applicant: Christopher Zerbst
Creative Brick
3195 Orchard Lake Rd.
Keego Harbor, MI 48320

(Reference: Staff Report dated January 5, 2017, prepared by Sara Roediger, Manager of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

Chairperson Colling read the request for the record, and asked the applicant to come forward and provide a summary of the request.

Chris Zerbst and Steven Bonamy, from Creative Brick, 3195 Orchard Lake Rd., Keego Harbor, MI, the applicants, came forward, introduced themselves and gave a summary of the request. They have been working with the homeowners and looked at a couple of different options, trying to modify it to conform within the required setbacks. The rear property line is not parallel with the house. That issue impacted the size and the shape of the structure to maintain the 35 foot setback. This impacts the space with the roof covering, as well as the patio itself. If the applicant left the patio where it is and just pulled the roof structure back, then the posts would be in the middle of the patio. They looked at other locations on the property, potentially pushing it further out into the yard moving it ten feet away from main structure. The applicants felt this would be more obtrusive to the neighbors, so keeping it attached to the house will make the patio blend in a little more. There are other similar structures and canopies throughout the neighborhood. There are many lots in the subdivision that contain full pools, additional pergolas or similar type roof structures. The patio is not enclosed, it is only a roof structure and two columns on either side, so you can see right through it; there is no visual obstruction. This ties in nicely with the construction of the home.

Chairperson Colling asked if there were any extraordinary circumstances associated with the property that requires the variance.

Mr. Bonamy indicated the main hardship is with the rear property line and how it is not parallel to the house. With the grade that the doorwall is at, it impacts the height. There would have to be a lot more steps to get up to the actual patio, where in the proposed addition, there are steps out of the doorwall.

Mr. Colling commented there is a buildable building envelope within the lot that could be utilized by reducing the size of the structure.

Mr. Bonamy stated then the structure would only be eight feet away from the house.

Mr. Colling explained no, you can keep it ten feet away from the home, just build a smaller deck and structure. You have a building envelope available to work within. The issue is the applicant's desire to build something larger than the allowable building envelope.

Mr. Bonamy feels the problem is attaching it to the house, that's why it has to be ten feet away.

The Chair clarified that in order for it to be an accessory structure and be subject to a different set of rules, you have to be 10 feet away from the house. The proposed structure is not 10 feet away from the house, whether it's attached to the house or not. If it's less than 10 feet away from the house, it's considered attached. Because the proposed structure is considered to be attached, the roof that goes on the deck is subject to the same rear yard setbacks and architectural rules as if it were part of the house. You could leave the front of the unit where it is proposed and put in a lesser sized unit that does not project as far and build within the current building envelope. The issue is the desire by the applicants and/or homeowner to build a structure that is larger than allowed. The Board has had other situations where the lots were not uniformly parallel from front to back, and to his recollection, not one variance has been granted if there is an allowable building envelope on the property. He did recall a pie-shaped lot that the Board had to grant a variance for in the interest of fairness.

Mr. Bonamy stated from his perspective, instead of encroaching more into the yard and taking up more of the yard space and having it closer to the neighbors, he feels that by attaching it to the house, it makes it more aesthetically pleasing and functions much nicer. The owners would not have to be in the rain to go out to a canopy area. He is not asking for 10 or 20 feet, only six feet.

Mr. Colling pointed out that to satisfy the requirements for a variance, there needs to be a compelling engineering or physical difficulty other than the desire to build the proposed size.

The Chair then called for staff to summarize the staff report.

Mr. Craig McEwen, Plan Examiner/Building Inspector with the Building Department, indicated when he reviewed the plans, he knew the addition was going to be within the setback, at which time the denial letter was issued. He suggested a redesign and some other alternatives, but it appears these options were not explored.

The Chair opened the floor to Board discussion.

Mr. Koluch pointed out precedence for denial has been set with a similar case the Board heard in 2014 for a five foot variance to build a sunroom. The City has setback rules for a reason. Even though it was a request for only five feet, there was no hardship and alternatives existed, so the variance was denied.

Mr. Hetrick referred to the staff report wherein it states that compliance with the ordinance would require the patio to be reconfigured or to be fully or partially unenclosed; the roof would have to be removed. He confirmed with the applicants that the owner does not want to remove the roof. Mr. Hetrick stated this is a self-created problem that can be solved by removing the roof and building the deck as designed.

Mr. Colling commented the applicant has the ability to comply with the ordinance, even though it may not be the design he prefers. Unfortunately, anything that is attached to the home is not considered an architectural projection, it is an actual building and this is why the setback rules apply. If a variance is granted in this case, then a variance has to be granted for anyone else with the same request. The Board has denied similar variances in the past, and he is more inclined to believe there are other ways to re-evaluate the design of the proposed attachment and get something that the homeowners and applicants can accommodate. He is not inclined to grant the variance.

Mr. Hetrick agreed, and commented the applicant can build the deck with the footprint that exists without a roof and it would be in compliance. If the applicant is unwilling to make that adjustment, it is not in compliance and a self-created problem.

The applicant asked if the fireplace has any issues with being in the setback.

Mr. McEwen responded that he sees it as part of the whole pavilion, which is how he came up with the dimensions.

The Chair commented if the fireplace is not supporting structure of the roof and is a stand alone fireplace, there isn't an issue with the setback.

Ms. Brnabic agrees with everything that has been said. There is no unique circumstance to the property and the situation is self-created.

Mr. Chalmers said the applicant mentioned other structures within the subdivision that have similar circumstances, and asked him to explain.

Mr. Bonamy clarified similar canopies exist, and is not aware of other encroachments or variances that have been granted.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 16-032, that the request for a variance from Section 138-5.101 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a variance of 6.58 feet for 3971 Piccadilly Dr., Parcel Number 15-19-328-028, zoned R-2 (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:

- 1. Compliance with the strict letter of the restrictions governing the minimum setback for attached accessory buildings will not prevent the owner from using the property for a permitted purpose in a reasonable manner and will not be unnecessarily burdensome.*
- 2. There are no unique circumstances of the property that necessitate granting the variance.*
- 3. The circumstances are self-created by the applicant in the form of their desire to construct a covered attached accessory structure larger than permitted on the property.*

4. *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.*

A motion was made by Koluch, seconded by Hetrick, that this matter be Denied.

The motion carried by the following vote:

Aye 5 - Brnabic, Chalmers, Colling, Hetrick and Koluch

Absent 2 - Fons and McGunn

2017-0007

PUBLIC HEARING - FILE NO. 16-033

Location: 2201 Crooks Rd., located on the east side of Crooks, between Hamlin Rd. and Star Batt Dr., Parcel Identification Number 15-28-102-002, and zoned REC-W (Regional Employment Center - Workplace).

Request: An appeal of staff's determination under Section 138-4.300 (Land Use Table) and Section 138-4.105 (Prohibited Uses) of the Code of Ordinances, that the proposed crematorium facility is not a permitted use by the City's Zoning Ordinance.

Applicant: Gary M. Piontkowski
2201 Crooks Rd.
Rochester Hills, MI 48309

(Reference: Staff Report dated January 5, 2017, prepared by Edward P. Anzek, Director of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

Chairperson Colling read the request for the record, and asked the applicant to come forward and provide a summary of the request.

Mr. Gary Piontkowski, 2201 Crooks Rd., Rochester Hills, property owner and applicant, introduced himself and handed out copies of his presentation materials to the members. He indicated he has been researching crematorium facilities and the cremation process for the last year and a half. When he first started to research this issue, he thought the facility was going to smell, be gross and he really didn't want to do it. But he's changed his mind after research. The machines for the crematoriums are very EPA oriented; there is no smell or smoke. He was amazed at how clean it burns. His own stacks in the auto collision paint spray booth and the nearby restaurants all have more smoke, etc., coming out of their stacks. In the crematoriums, the first burner is at 950 degrees, the second burner is at 3,050 degrees and that actually burns and destroys any of the smoke going into the system. But it's not really smoke. In his report there is a picture of a cylinder in use and what is being emitted is steam, not smoke. 85% of the human body is water, so what is coming out of the stacks is steam. He commented this is not bad for the environment at all. He visited other crematoriums in the area, and there are dance studios and aerobics right next to them, being used while the crematorium machines are running. He feels the use will not impact any nearby businesses, they won't even know it's there. There was no smell as it burns so efficiently and clean.

The Chair asked for a summary of the staff report.

Mr. Anzek explained that the ZBA's responsibility tonight is to determine if staff erred in judging whether crematoriums are permitted in the City. When he first met with Ms. O'Brien, a representative from Alternative Burial Services, they were trying to find a definition or something similar in the ordinance that would accommodate this operation, but couldn't. In consulting with John Staran, the City Attorney, he could not come up with any definition in the Zoning Ordinance that supports a crematorium. Section 138-4.105 Prohibited Uses states "uses that are not specifically listed as a principal use or conditional use permitted by this ordinance in a zoning district, or otherwise determined to be similar to a listed, and permitted use, shall be prohibited in the district". Mr. Staran stated the Zoning Ordinance is based on permissibility, and anything not expressly listed in it or a similar use, is therefore prohibited. Plans were submitted to the Building Department to convert a section of the applicant's building into a crematorium. Mr. McEwen brought this to Planning's attention, discussions began and the request was denied. It's not an issue of staff not liking the proposal, we are just applying the ordinance to the question asked. The conclusion is that crematoriums are not permitted. Staff has initiated a study on this matter based on need. It is also based on suitability for the City as determined by the Planning Commission and City Council. They are the ones that control the Zoning Ordinance. The ZBA is the legislative body that regulates the ordinance. Mr. Anzek thanked the applicant for his research as it will help staff in their study, but it doesn't go to the question before the Board tonight.

Chairperson Colling stated he understands it's not a matter of the business proposed, it's not a matter of the environmental impact, and it's not a matter of smell or decorum. The ZBA has to look at the ordinance as written today to determine whether or not this is a permitted use. The City's Zoning Ordinance is written to be somewhat permissive in that unless something is expressly permitted, it's not allowed by implication. Unfortunately, the closest ordinance we have is for an incinerator, which is barred in the City. He agrees with the applicant in principle as to his business plan and analysis; but the ZBA is a quasi-judicial board and he can't legislate from the bench. He can make a recommendation to Council. He strongly urges Council and the Planning Commission to assign some priority to this issue, make a determination quickly on the matter and to come up with an ordinance regarding crematoriums, if they want them in the City. There has to be an ordinance specifically designed around crematoriums, not incinerators. This is his recommendation.

Mr. Anzek deferred to Ms. Brnabic as the Planning Commission Representation, that this will be taken up as a discussion item with the Planning Commission as soon as possible.

The Chair opened the floor for Board discussion.

Mr. Hetrick agrees that as a quasi-judicial Board, the ZBA's job is not to evaluate the business plan or the market opportunity. As such, agrees that the Board would uphold what was proposed as a denial of the request from staff. As

the representative from City Council, he agrees that something needs to occur as soon as possible to either allow the conditional use or whatever the analysis would provide, to be reviewed by the Planning Commission and City Council. Until such time, he has to agree with the denial as it stands.

Ms. Brnabic totally agrees; this is an appeal of an administrative decision. The Board has to deal with this issue in that format right now. There will be a discussion on this matter at Planning Commission because there is nothing in the ordinance right now.

Mr. Piontkowski agreed and offered his help in any way he can. The business is done very discreetly; there are no windows, and no one will know what is happening inside. He feels there is a need in the City for this type of business as we are running out of space for burials. He wants to help make it work for the City.

Mr. Chalmers thanked the applicant for being a business owner and asked how his proposed use came about. There is no "for lease" sign in front of the building, so how did Mr. Piontkowski get matched up with the crematorium business.

Mr. Piontkowski indicated he wanted to be a mortician when he was younger, but couldn't pass the coursework. He did not seek out the crematorium business, it's his idea.

Ms. Brnabic asked if this issue could be added to next week's Planning Commission agenda as a discussion item.

Mr. Anzek confirmed this issue will be brought forward as a discussion item. It can't be done as an ordinance amendment yet because the study is not complete. If there is support for this use, there would be certain standards that would go with the development, such as no windows, no visibility from the street, modest signage, etc.. The Planning Consultants have started some initial research and are looking into what it takes - demands from funeral homes, etc. It will be discussed at Planning Commission as to support with appropriate conditions or standards for their implementation. It will then come back for a Public Hearing if this is the desired approach of the Planning Commission.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 16-033, that an appeal of staff's denial of the right to use property located at 2201 Crooks Road for a crematorium, Parcel Number 15-28-102-002, zoned REC-W (Regional Employment Center - Workplace) be **DENIED**, and further that the decision by the Zoning Board of Appeals is based on the following findings:

- 1. Section 138-4.300 Table of Permitted Uses by District, does not list crematorium(s), crematories, or any similar term as a permitted by right or by Conditional use permit in any Zoning District of the City.*
- 2. That by standard practice and by Ordinance requirement, as stated in Section 138-4.105, there are not any other uses that are determined to be similar to a crematorium that is permitted in the District.*

3. *Section 138-4.105 Prohibited Uses, states that any use not listed as a permitted use or conditionally permitted use, or any similar use, is prohibited.*

4. *And that the legal opinion provided by the City Attorney supports the decision of staff.*

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

Aye 5 - Brnabic, Chalmers, Colling, Hetrick and Koluch

Absent 2 - Fons and McGunn

Chairperson Colling clarified that the motion to appeal has been denied, and the ZBA is upholding staff's decision in this case.

RESOLUTION *by Hetrick that the Zoning Board of Appeals asks the Planning Commission and City Council to consider developing an ordinance regarding crematoriums within the City, and standards for the same if they choose to allow them. The ZBA also asks that consideration of this matter happen quickly.*

Ayes: All Nays: None Absent: Fons, McGunn **MOTION CARRIED.**

ANY OTHER BUSINESS

No other business was brought forward for discussion.

NEXT MEETING DATE

The next Regular Meeting is scheduled for February 8, 2017.

ADJOURNMENT

Chairperson Colling adjourned the meeting at 7:45 p.m.

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

Sandi DiSipio, Recording Secretary