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Aye 4 - Brnabic, Brenman, Colling and Monaghan

Absent 3 - Duistermars, Verschueren and McGunn

RESOLVED that the Minutes of the December 10, 2007 Regular Zoning Board of Appeals Meeting be approved as presented.

## 5. ANNOUNCEMENTS/COMMUNICATIONS

- A. Planning & Zoning News, December 2007 Edition
- B. Planning & Zoning News, January 2008 Edition
- C. Planning & Zoning News, February 2008 Edition
- D. Ordinance Amendment No. 162 (Repeal Section 138-47)
- E. Michigan Planner, December 2007 Edition
- F. Michigan Planner, January 2008 Edition
- G. Michigan Planner, February 2008 Edition
- H. 2007 Year-End Report, Planning & Development Department

Chairperson Colling noted the Board had received copies of the above documents, and suggested if the Board had any questions about any of those documents they should contact the Planning & Development Department. He then called for any other announcements or communications. No other announcements or communications were provided.

Chairperson Colling stated that the procedure for conducting Public Hearings was outlined on a flyer located in the rear of the auditorium. He stated that any and all evidence, and any documents or exhibits submitted during tonight's proceedings, would be included as part of the public record of the meeting. He reminded the Board and the audience that all questions should be directed to the Chair.

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## 6. NEW BUSINESS

6A. 2008-0098

**PUBLIC HEARING - FILE NO. 84-524**

Location: 1841 Crooks Road, located on the east side of Crooks Road, north of Hamlin Road, south of Avon Road, Parcel Identification Number 15-20-428-003, zoned R-1 (One Family Residential).

Request: A request for a variance of 587 square feet from Section 138-174(1) of the Code of Ordinances (Nonconforming structures), which states, "no structure may be enlarged or altered in a way which increases its nonconformity". The proposed addition on the north side of the home extends past the previous footprint, thereby increasing the nonconformity of the structure located in the required front setback.

Applicant: Fred Dunn  
1104 Maple Leaf Drive  
Rochester Hills, Michigan 48309

Chairperson Colling read the request for the record, and invited the applicant to come forward to the presenter's table, state his name and address for the record, and provide a brief summary of the request.

The applicant, Mr. Fred Dunn, 1104 Maple Leaf Drive, was present. He stated he owned the home located at 1841 Crooks Road, which he was trying to renovate to make it a useable piece of property. He explained the description about the non-conforming portion was incorrect, and pointed out it was actually located on the south side of the home.

Chairperson Colling asked if the Board had a problem with the description of the variance requested for this matter. Mr. Delacourt agreed the description should state the south side of the structure, but noted it was not a material difference as the accuracy of the number was correct.

Chairperson Colling stated that the Board would change the verbiage for the record to read on the south side of the home, noting it did not substantially change the intent of the request.

Mr. Dunn stated he had supplied drawings to the Historic Districts Commission, and had to remodel one wall to carry through with the existing historic portion of the existing house. He explained he had to put the roof back, which required that a change be made to the existing non-conforming stairwell to meet the specifics of the City's Building Codes. He noted the existing stairwell was only two feet wide, and if he removed it to build a new stairwell, he would be extending the adjacent room. The stairwell was necessary to get to the second story for the third bedroom. He indicated the actual extension was only 3.6 feet, and the rest of the square footage was behind that stairwell towards the east. He clarified that the extension to the south was only three feet that would be seen from the street, and the balance was behind the home.

Chairperson Colling asked if the applicant had anything additional to add. Mr. Dunn stated that in order for him to build the stairwell to the second floor that met the requirements of the City Code, that was the area to expand because of the rooflines.

Chairperson Colling asked if the home was a historic home. Mr. Dunn responded "yes".

Chairperson Colling asked if the applicant's plans had been reviewed by the Historic Districts Commission. Mr. Dunn responded "yes".

Chairperson Colling asked what comments the Historic Districts Commission had regarding the home. Mr. Dunn stated at the time he did not realize his plans were out of compliance, and the Historic Districts Commission approved his requested renovations. He explained one of the former owners of the residence had put several additions on the home without permits. He stated he pulled demolition permits from the Building Department to tear off those incorrect additions, which had not even been placed on foundations, but were sitting on the ground and falling off the building. After he received the demolition permits, and submitted for building permits, he was informed he could not rebuild because he was out of compliance, which was the reason he was before the Board requesting the variance.

Chairperson Colling clarified the home was a historic home, and a previous owner had built additions without permits that were built on the ground. He suspected those additions were fairly old, and asked if the applicant knew when the additions were put on.

Mr. Dunn stated he thought the latest addition was put on in 1992, and the other additions were put on before that time. He explained there were three additions in total.

Chairperson Colling clarified that even the addition that was put on in 1992 was built on the ground. Mr. Dunn responded "yes". He commented that former owner probably did not ask for permits for the additions, and noted it was long story. That former owner had gone to court several times over the property.

Chairperson Colling verified that this was not the applicant's primary residence in Rochester Hills. Mr. Dunn stated it was not, but he wanted to make it his primary residence.

Chairperson Colling asked if there were any unusual circumstances regarding the building envelope on the lot, or anything to do with the structure or topography, that made it impossible to do any work on the home with the variance being granted.

Mr. Dunn stated that the former owner had cut into the ceiling beams on some of the upper structure, which had to be replaced because it was not put back up correctly. He commented there had been an apartment upstairs, and things were moved, and there was no way to put in the upstairs bedroom with what had been taken out. He explained in order to make the home a three bedroom home, which he needed, he had to put the extension on to get to the bedroom to get the stairwell to the second story.

Chairperson Colling stated he understood what the applicant was explaining from a building perspective. He asked if the additions were put on the home prior to the home being designated historic, or after the fact.

Mr. Delacourt explained the designation of the home occurred in 1978. He did not know when the various additions were put on the home. He stated the applicant was correct that the property had a long and storied history within the City as far as enforcement issues, violations, appropriate or inappropriate additions, and correct approvals and incorrect approvals. He noted there were several additions to the house, however, the main one involved in this request was located on the south side of the house. He stated the City was never able to establish when the addition was put on, and he did not believe there was ever a permit pulled for the addition. He stated the Historic Districts Commission did approve the removal of that addition.

Chairperson Colling asked if the approval by the Historic Districts Commission (HDC) was for removal and the reestablishment of something similar, fitting into the lines of the home; or whether it was an approval for demolition to put the home back to its original condition.

Mr. Delacourt stated it was both. He explained the HDC issued two approvals. One was for the removal of the addition. He noted that structurally it was impossible to rebuild or restore that addition. He stated the HDC also approved a renovation of the structure that included putting back on that addition because it fit within the integrity of the historic structure. He explained the applicant was limited on what he can do based on the rules used by the HDC to review and approve projects. He clarified that at the time the plans were submitted to the HDC, the original plans did not show an increase in the nonconformance. It was through the revisions within the window of approval of the HDC of that addition, that it was identified that the stairwell needed to be widened, which would increase the nonconformance of the structure.

Chairperson Colling clarified that the reason the stairwell had to be widened because it was a fire egress, and there were Standards requiring the City to dictate how large the stairwell had to be. Mr. Delacourt stated that was correct.

Chairperson Colling clarified the applicant could not rebuild the stairwell to its conforming size, noting if the stairwell was rebuilt to the same size, no variance would be required as the stairwell would still be nonconforming. Mr. Delacourt stated that was correct.

Chairperson Colling stated that a situation has been created that in order for the applicant to rebuild, he has to have a variance for the stairwell because of the safety issues and the requirements of the City. Mr. Delacourt agreed that was correct.

Mr. Delacourt added there had been discussion among Staff about whether the stairwell width could be gained on the interior of the addition with a loss of living space. In reviewing the plans, it appears it is reasonable based on the width and the

size of the addition, or the increase in nonconformance being requested, that the applicant is not increasing what was there previously as living space. It was only enough to accommodate the addition of the stairwell and a third bedroom upstairs. He noted the third bedroom upstairs is the additional part of the increase in square footage, which was to make the home a three-bedroom home. He stated that did fit within what the HDC felt was appropriate for an addition without damaging the integrity of the existing resource. He pointed out that the second story addition only extended over what was previously a patio area.

Chairperson Colling thought what the Board was seeing before them was not an unreasonable request considering the circumstances, and asked if Staff agreed with that opinion. Mr. Delacourt indicated it was, and noted that unlike most cases he was compelled to make a recommendation in this matter. He stated he had included a potential motion in the packet materials that indicated it was a unique situation based on the circumstance of the house being a historic resource, which limited the applicant in ways that other surrounding property owners were not normally limited. He felt the applicant's request was reasonable within the envelope the HDC wanted the applicant to maintain.

Chairperson Colling asked the applicant if he were granted the variance, whether he would be able to build and be satisfied with the home. Mr. Dunn responded "yes". Chairperson Colling asked if the applicant would require additional variances to complete his project. Mr. Dunn responded "no".

Mr. Brennan clarified whether the request was for the north or south side of the home. Mr. Delacourt responded it was the south side. Mr. Brennan asked if proper notice had been given for the variance request. Mr. Delacourt stated it had, and noted that the notice would not materially change the request.

Chairperson Colling stated he had made that statement for the record. Mr. Brennan stated he just wanted to clarify the matter. He questioned whether there were adjacent neighbors that might have some concerns. Mr. Delacourt noted the parcel directly to the north was vacant, and abutted two residential parcels to the south. Chairperson Colling stated that the advertised variance was substantially the same. Mr. Dunn stated he owned the lot on the north side of the property.

Mr. Monaghan asked if the jurisdiction of the HDC over the property extended over the entire parcel or just the historic structures on the parcel. Mr. Delacourt stated it was the entire parcel. He explained that the HDC review distinguishes between contributing and non-contributing resources, and each is reviewed in a slightly different manner. However, the designation incorporates the entire parcel.

Chairperson Colling opened the Public Hearing at 7:56 PM and asked if there was anyone who wished to speak on this matter.

**Kim Bailiff, 2101 Bretton South**, stated she was on the Board of the Christian Hills Subdivision Association. She stated she had spoken to several of her neighbors, and noted the applicant's property was part of their subdivision. She wanted to thank Mr. Dunn for taking on the project as the building had been an eyesore for years, and had continually gotten worse. She implored the Board as a resident and as a member of the subdivision association to approve Mr. Dunn's request so he could improve his property. They were looking forward to welcoming him to the neighborhood. She noted it was horrible to drive past the property every day.

Chairperson Colling called for any other persons who wished to speak. There being no other persons wishing to speak, he closed the Public Hearing at 7:57 PM. He then called for any further discussion by the Board.

Mrs. Brnabic stated she was prepared to make the motion included in the packet. Chairperson Colling asked if there was a second to the proposed motion. Mr. Monaghan stated he would second the motion, and asked if the motion maker would consider the addition of the following finding of fact:

7. The practical difficulty and unnecessary hardship referenced in Finding #1 is also a result of the conflict between the standards of the Historic Districts Commission and the Building Code requirements. The exceptional circumstances referenced in Finding #2 are not self-created.

Mr. Monaghan explained that based on the discussion, he felt the conflict with the building code requirements should be noted in the motion.

Chairperson Colling asked if the wording in Finding #1 included that aspect. Mr. Monaghan stated it appeared to be more of a building code conflict than a dimensional issue. Mr. Delacourt stated that was one of the issues that had been presented. He commented it was up to the Board to determine if that was one of the findings that created the need for the variance.

Chairperson Colling stated he thought the dimensional issue indicated the dimensions of the stairwell. If that was not the case, he did not object to including an additional finding, if the maker agreed as well. Mrs. Brnabic stated she would accept the additional finding.

Chairperson Colling stated there was a motion on the floor made by Mrs. Brnabic and seconded by Mr. Monaghan, and asked if there was any discussion on the motion. Upon hearing none, he requested a roll call vote.

Complete Motion (as Voted):

**A motion was made by Brnabic, seconded by Monaghan, that this matter be Approved. The motion CARRIED by the following vote:**

**Aye 4 - Brnabic, Brennan, Colling and Monaghan**

**Absent 3 - Duistermars, Verschueren and McGunn**

**RESOLVED** in the matter of File No. 84-524, that the request for a variance of 597 feet from Chapter 138-174(1), of the Code of Ordinances to allow an increase in nonconforming area of 597 square feet, be **APPROVED** for 1841 Crooks Road, Parcel Identification Number 15-20-428-003, with the following findings and subject to the attached conditions:

Findings:

1. The standards for preservation of a historic resource, mainly the desire to preserve the original location of the resource, and the conflict with the City's Dimensional Zoning Requirements do create a practical difficulty and unnecessary hardship for the applicant.
2. The designation of the parcel as a Historic District does create an extraordinary or exceptional circumstance and creates conditions applicable to the property involved or to the intended use of the property that do not also apply generally to other properties or uses in the same zoning district.
3. The proposed plan is the most reasonable alternative for renovation of the structure and to allow use of the property consistent with other uses in the same zoning district.
4. The granting of this variance would preserve a substantial property right for this owner as enjoyed by other property owners in similar circumstances, and thus substantial justice shall be done.
5. The granting of this variance will not be materially detrimental to the public welfare or materially injurious to this property or other properties or premises in the Zone or District in which the property is located. There are no indications given that this will impair the traffic on the road, the safety of those traveling the road, or those living on the property.
6. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion in public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles or create any particular concern with the traveling public; or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City for all of the reasons stated above.
7. The practical difficulty and unnecessary hardship referenced in Finding #1 is also a result of the conflict between the standards of the Historic Districts Commission and the Building Code requirements. The exceptional circumstances referenced in Finding #2 are not self-created.

Conditions:

1. The granting of this variance is based on the site plan stamped as "received by the City of Rochester Hills Planning Department dated February 12, 2008." It is the expectation of the Zoning Board of Appeals that the eventual development on this site, if it does

occur, will conform substantially to that submitted plan in terms of setbacks and location on the property.

2. The structure shall conform to all applicable Codes and Ordinance Requirements, and all applicable permits shall be obtained from the Building Department.

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Chairperson Colling stated for the record that the motion had carried. He commented he was very pleased with the presentation made to the Board for the request. He noted the Board did not have many opportunities to help a homeowner and a homeowners association.

Mr. Delacourt stated he wanted to take a minute to express his appreciation to Mr. Dunn. He explained Mr. Dunn had been through a lot with the property as it had been a very involved process. He noted the addition the HDC wanted to see added to the house required Mr. Dunn to make several modifications to his plans and to incorporate some very unusual design elements into the structure. However, he continued to come back and provide revised plans, despite the fact it had been a long, frustrating process.

Mr. Dunn thanked the Board and Mr. Delacourt for their time and consideration.

**This matter was Discussed**

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**~~7. ANY OTHER BUSINESS~~**

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**7A. 2008-0100 Adopt 2008 Meeting Schedule**

Chairperson Colling stated that in order to be in compliance with the Open Meetings Act, the Board was required to adopt a meeting schedule for the year.

Mr. Brennan proposed the following motion to approve the 2008 meeting schedule, which was seconded by Mr. Monaghan. Chairperson Colling noted the motion had been duly made and seconded, and asked if there was any discussion. Upon hearing none, he called for a voice vote on the motion on the floor.

**A motion was made by Brennan, seconded by Monaghan, that this matter be Approved as Presented. The motion CARRIED by the following vote:**

**Aye 4 - Brnabic, Brennan, Colling and Monaghan**

**Absent 3 - Duisternars, Verschueren and McGunn**

**RESOLVED** that the Rochester Hills Zoning Board of Appeals establishes the 2008 Regular Meeting Schedule as follows:

*The Regular Meetings will be held on the second and fourth Wednesday of each month (except the month of December) and will be held at the Rochester Hills Municipal Offices*

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