



Rochester Hills

Minutes - Draft

Zoning Board of Appeals

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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, February 5, 2020

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 6 - Bill Chalmers, Ernest Colling, Jayson Graves, Dale Hetrick, Kenneth Koluch and Charles Tischer

Excused 1 - Deborah Brnabic

Quorum present.

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

APPROVAL OF MINUTES

[2020-0042](#) January 8, 2020 Regular Meeting

A motion was made by Koluch, seconded by Hetrick, that this matter be Approved as Presented. The motion PASSED by an unanimous vote.

COMMUNICATIONS

A) *Planning & Zoning News dated January and February 2020*

PUBLIC COMMENT

Chairperson Colling opened Public Comment at 7:01 p.m. Seeing no one come forward, he closed Public Comment.

NEW BUSINESS

[2020-0043](#) City File No. 20-002

Location: 47347 Dequindre Rd., located on the west side of Dequindre, north of Auburn, Parcel No. 15-25-479-053, zoned R-4 One Family Residential.

Request: A Variance of 9.97 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a 25-foot front yard setback in the R-4 district. After a necessary taking of road right-of-way, the existing dwelling will have a front yard setback of 15.03 feet from the new right-of-way.

Applicant: Road Commission for Oakland County
c/o 32255 Northwestern Hwy., Suite 225
Farmington Hills, MI 48334

(Reference: Staff Report prepared by Ms. Kapelanski dated January 29, 2020 and application documents had been placed on file and became part of the record thereof).

Present for the applicant was Devin Sullivan, Counsel for the Road Commission for Oakland County, 32255 Northwestern Hwy., Farmington Hills, MI 48334.

Mr. Sullivan felt that Chairperson Colling had outlined the request well. They were seeking a variance for the front yard setback on behalf of the property owner. The Road Commission for Oakland County (RCOC) was undertaking a project to widen Dequindre Rd., and the road right-of-way would be widened by about 15 feet. Previously, the home had been 31 feet from the right-of-way, which made it in compliance with the 25-foot minimum setback required. After the widening, the home would be about 15.03 feet from the right-of-way, and they were seeking a variance of 9.97 feet. He advised that the variance was being requested pursuant to Statue 213.54, which permitted the RCOC to request a variance on behalf of the property owner, and said that he would be happy to address any questions.

Chairperson Colling noted that the request was similar to one they reviewed last month. He clarified that the intent was to not have a nonconforming home by virtue of the taking of the property.

Ms. Kapelanski agreed that the request was similar to the variance considered at the previous meeting. The letter from Mr. Staran, City Attorney that applied to the previous variance would also apply to the subject request, and it had been included in the packet. The letter stated that the ZBA should consider the potential public benefits and public use of the acquired property. She recalled that at the last meeting, Chairperson Colling had asked for some notation of how many other variances the RCOC would be bringing forward related to Dequindre. They did not have any applications in to the City currently. She had reached out, and they indicated that there would probably be two

additional residences and one commercial property before the ZBA in the future.

Chairperson Colling expected that there would be more than that, based on the number of homes on Dequindre. He thought that they would get at least three more.

Chairperson Colling opened the Public Hearing at 7:05 p.m.

Lynford Allen, 47385 Dequindre Rd., Rochester Hills, MI 48307 *Mr. Allen noted that he lived next door to the subject property (just south of Clovelly). He asked how the setback was measured - from what to what. Chairperson Colling explained that a setback was measured from a home to the right-of-way, and it did not necessarily go to the street. He doubted that the RCOC would use the entire right-of-way for a road, but whatever it came to after widening, that would determine the setback. Mr. Allen noted that the RCOC bought ten feet from him. He asked if there had to be 25 feet from his house to the property line. Chairperson Colling agreed that was correct according to the R-4 Ordinance. He added that if the setback became less than that because of the taking, the RCOC would come before the ZBA and ask for a variance to prevent Mr. Allen's home from becoming nonconforming. Mr. Allen said that his house would be 13 feet from the new right-of-way, and Chairperson Colling indicated that he would be coming before the ZBA for a variance.*

Chairperson Colling closed the Public Hearing at 7:07 p.m. He said that he had no questions, as the matter was pretty straight-forward.

Hearing no further comments, Mr. Koluch moved the following:

MOTION by Koluch, seconded by Tischer, in the matter of File No. 20-002, that the request for a variance of 9.97 feet from Section 138-5.100 of the Rochester Hills Code of Ordinances to allow an existing building to be located 15.03 feet from the proposed right-of-way, for 47347 Dequindre Road, Parcel Identification Number 15-25-479-053 be **APPROVED** because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with respect to the front yard setback for which this variance is granted.

1. *The Zoning Board of Appeals finds that the public benefits associated with the Dequindre Road improvement project are*

significant and merit the granting of this variance as referenced by MCL 213.54 (2), the Uniform Condemnation Procedures Act.

- 2. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property as has been previously enjoyed and will be unnecessarily burdensome based on the recent improvements completed by the Road Commission for Oakland County (RCOC) on Dequindre Rd.*
- 3. Granting the variance will preserve a substantial property right for the applicant as has been previously enjoyed by this property owner and thus substantial justice shall be done.*
- 4. A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.*
- 5. There are unique circumstances of the property that necessitate granting the variance as described in finding 1. above, and that distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations.*
- 6. The problem is not self-created by the property owner as the change in ROW was dictated by RCOC.*
- 7. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.*

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

Aye 6 - Chalmers, Colling, Graves, Hetrick, Koluch and Tischer

Excused 1 - Brnabic

Chairperson Colling stated for the record that the variance had been granted. Mr. Koluch asked how many more of the same the ZBA should expect. Chairperson Colling pointed out the diagram in the packet that showed other homes, and from that he thought there should be four or five more.

Mr. Sullivan said that it was his understanding that there were only two residences that would need a variance. Some of them were really close. Chairperson Colling noted that his daughter lived in the home next door, and he knew that it would need a variance. Mr. Sullivan said that he would follow up. Chairperson Colling said that he had asked to know

about each request, because his fear was that they would find out at a later date that they had missed something. He would not want to leave one of the homes nonconforming. He had requested it once, but he would still like the RCOC to tell the ZBA the next time it was before them which properties would need a variance.

Ms. Kapelanski advised that she did follow up with the County; they had just not been prepared to provide that list. Mrs. Allen (husband spoke) asked if that included their home, which Mr. Sullivan confirmed.

ANY OTHER BUSINESS

Chairperson Colling mentioned the recent ZBA training he and Mr. Graves attended. He said that he was quite impressed at how the City was doing and how fortunate they were to have a great staff to work with. A lot of boards were not provided sample motions like they got from staff and from City Attorney John Staran. He felt that helped new members make a motion, and it also provided findings that were useful. One of the things impressed upon the attendees was that a ZBA should always provide findings. There were a couple of cases he disagreed with, where the instructor would have granted a variance. Chairperson Colling felt that Rochester Hills was a little stricter than other cities, but he felt that it paid off. He did not know of one time in the 20 years he had been on the ZBA where a decision was overturned by a court. If people wondered why he polled the group for an opinion, it was because he wanted it on the record, which he felt was critical. They all needed to speak up and put it on the record so that there was no doubt what the ZBA decided, in case something went to court.

Mr. Graves said that he also enjoyed it, and he was thankful he was able to attend.

Ms. Kapelanski commented that there had been a slight change to the Auditorium. To the left of Mr. Hetrick at the dais, there had been a panic button installed that could send a silent alarm to the Sheriff's Office. If there was ever an incident, it was available.

NEXT MEETING DATE

Chairperson Colling reminded the ZBA members that the next Regular Meeting was scheduled for March 12, 2020.

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals and upon motion by Mr. Hetrick, seconded by Mr. Tischer, Chairperson Colling adjourned the Regular Meeting at 7:15 p.m.

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

Maureen Gentry, Secretary