

DISCUSSION

2013-0126

SIGN BOARD OF APPEALS**FILE NO. 06-013**

Location: The northwest corner of a parcel of land located on the west side of Crooks Road, north of Avon Industrial Drive and south of Hamlin Road, adjacent to the parcel identified as Parcel Number 15-29-228-004, zoned B-3 (Shopping Center Business).

Request: Request for a Motion to Reconsider Approved Variance

(Reference: Memo dated October 3, 2013 by Jim Breuckman was placed on file in the Planning and Economic Development Department and by reference becomes part of the record thereof.)

Chairperson Colling read the request for the record.

Mr. Breuckman commented the memo provided to the members includes the background of the case, the process for a reconsideration of an approved variance and sample motions. He summarized the events leading up to tonight. The Sign Board of Appeals approved a five year extension of the sign currently existing in the right-of-way of Avon Industrial Drive. At the time of the April meeting, staff did receive an email from the owner of the shopping center in front of which the sign is located. Said email went into the City's spam folder and was not discovered until after the meeting. For this reason, the request is being placed before the Board for reconsideration. Mr. Breuckman indicated staff worked with the owner of the shopping center and the applicant to try to arrive at an amenable solution before bringing the request back to the SBA, but was unable to arrive at a mutually agreeable solution. A member of the Board who voted yes on the original motion in April must make the motion to reconsider; any member can second the motion. If there is a motion to reconsider and it passes, the matter can be taken up again for discussion. Basically, it brings the Board right back to the point where the motion to approve is on the table and open for discussion. The Board can amend the motion to approve, or if there is a change of heart, the motion to approve can be voted down and then another motion would have to be made to replace it. If there is no desire to reconsider, no motion is necessary.

MOTION by Verschueren, seconded by Kochenderfer, in the matter of File No. 06-013, that the April 10, 2013 approval of extension of variances from Section 134-109(b), 134-115(a) and 134-115(c) of the Rochester Hills Code of Ordinances to allow one off-premises real estate sign to be located in the public right-of-way of Avon Industrial Drive, west of Crooks Road, adjacent to the parcel identified as parcel number 15-29-228-004 be **RECONSIDERED** in light of new information being brought to light that was not available to the SBA when the variance was approved.

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

Aye 6 - Brnabic, Colling, Duistermars, Kochenderfer, Koluch and Verschueren

Absent 1 - McGunn

Chairperson Colling invited the shopping center owner to come forward, introduce himself and provide a brief summary of the situation.

Mr. Albert Santia, 37598 Paula Court, Clinton Township, Michigan, came forward indicating he is the owner of the shopping center. He was not present at the April meeting as he was out of town. He did send an email to the Zoning Board but it got stuck in the junk mail, so it was not read at the April meeting. About seven years ago, he purchased the shopping center. He's remodeled the center trying to keep tenants leasing. When the sign went up five years ago, he didn't like it, but did not make a fuss about it. Now the tenants complain that the shopping center is lower to the ground compared to the height of the street, and the sign blocks the shopping center's view from people travelling on the road. He called Mr. Sage about it and he explained the sign is approved for five years, after that you can try to fight it and get it removed. Mr. Santia notified his tenants of this and is here tonight representing them. He also knew that Bank of America on the corner was not going to renew their lease. He worked hard for a tenant and got Tim Horton's. They have six months to decide if they will back out of the lease or not. He is afraid that the existing sign might stop Tim Horton's from leasing the corner. Mr. Santia wants the applicant to be successful and have their space leased, but is just asking them to move the sign to the other side of entranceway to the shopping center off Avon Industrial. The applicant thought that location was not visible enough. It was suggested the sign be lowered to three feet, but Mr. Santia doesn't know if Tim Horton's will like that - they probably won't want any sign blocking their view from the road other than their own. He is asking that the sign not be allowed where it is located, and that it be moved to the other side of the entranceway.

Mr. Brett Everhart, 23619 Brookdale, St. Clair Shores, Michigan, the applicant, came forward and stated that what Mr. Santia has stated is true. The reason the sign has been in the right-of-way for five years is that he approached Mr. Santia and asked if they could come to some type of terms to lease a piece of his property for a sign to show there is property back there for lease, due to the business park not having visibility on a main road. He also indicated he's fixed up his buildings and done a nice job of maintaining them. Mr. Everhart explained he met with Mr. Santia and Messrs. Anzek and Breuckman from the City, and offered to reduce the sign to half its size just to have visibility. He has 80 tenants that have customers and deliveries and finding the complex is difficult at best. It is nice to have the sign as a landmark so people know the complex is back there. To move the sign to the west of the driveway it would be across from the carwash, and to have any visibility of the sign, you would have to actually be on Avon Industrial Drive. He receives complaints several times a year that there is not enough signage, even at the complex.

Chairperson Colling indicated he also chairs the Advisory Traffic and Safety Committee and from a site distance standpoint, the idea of the sign was so people going up and down Crooks Road could identify where the complex is. Putting it on the west of the shopping center driveway is not going to work. It's too far and is not going to be seen from the road, and the idea behind the sign is that it allows people traveling Crooks to identify where they have to turn before they are right on top of the sign. Precedent has been set for this because of the

sign across the street, but that sign is on individual property, not right-of-way. Mr. Sage explained that is a permanent sign and is on personal property. Mr. Colling clarified that the applicant has had use of his sign before and does not object to him having a sign in the right-of-way, but believes that an agreement must be reached between the two parties involved that works for both of them. He then opened the floor for Board discussion.

Mr. Koluch asked Mr. Santia if the sign's industrial aesthetics are what bothers him.

Mr. Santia said the sign reads "for lease" and he feels the sign could be located anywhere. He thinks the sign is too large and it blocks the shopping center. A lot of tenants are upset about this and he feels the sign needs to be moved. Mr. Santia explained he talked to Mr. Everhart about the possibility that if Tim Horton's needs a sign, maybe there could be an agreement that the business park could lease some space under the Tim Horton's portion of the sign, but Mr. Everhart wasn't open to that.

Mr. Colling commented the unfortunate word here is "maybe" - the business park needs something they can bank on, not a possibility.

Mr. Santia said if he gets the Tim Horton's confirmed, he will probably need to return to this Board to get them a sign.

Chair Colling clarified there is room on shopping center property to meet all standard codes, which means the sign would be built on this property and not in the right-of-way. Mr. Santia understands that and wants to leave a space open for the business park that they could lease. Mr. Colling indicated this could be a condition of the variance approval - that if Mr. Santia comes back with a Tim Horton's sign, the SBA could accommodate with variances or whatever is necessary, a two-party sign that goes up representing Tim Horton's and the business park. Mr. Santia would have to agree that as long as the monument sign exists, the business park has access to it. Mr. Santia said the terms of the lease/rent would have to be agreed upon.

Mr. Duistermars questioned if the other tenants would have panels on the sign. Mr. Santia replied no, and added that he is likely going to reduce the existing signage to make everything to code.

Ms. Brnabic commented the bank is not currently occupying the property; Mr. Santia concurred the building is vacant. She then asked what other tenants the business park sign is affecting. Mr. Santia explained that the Buscemi's and All State Insurance tenants complain about the sign all the time. When people are stopped at the light, the sign blocks the view of these tenants.

Ms. Brnabic stated because Tim Horton's is only a possibility at this point, she asked if Mr. Santia would agree to a reduced sign as the applicant has stated he is willing to do this. Mr. Santia replied he wants the sign moved.

Chairperson Colling interjected that the bank building blocks the sign from the other businesses in the shopping center. Mr. Santia agreed. Mr. Colling feels

the sign can't have any impact on their visibility because the building on the property blocks them. Mr. Santia said you can see through the drive-thru.

Mr. Colling commented the Board has heard both sides of this issue, there is precedent for keeping the sign, and the members are looking at issues that are "maybe's" regarding this. He is trying to find some middle ground, but unfortunately Mr. Santia is not offering anything that is reasonable for the applicant.

Mr. Santia said the applicant can move the sign and keep it on his property. Chair Colling commented that is not reasonable; moving the sign to the west of the entranceway is not going to work. Mr. Santia indicated the sign blocks visibility from the street. Mr. Colling is willing to work on the size of the sign, but something has to be given that allows the applicant's sign to be seen from Crooks Road. Mr. Santia said the sign needs to be moved. Mr. Colling asked staff if there was another location for the sign.

Mr. Sage suggested between the bank building and the entranceway to the shopping center. The only other alternative would be if it was some type of directional sign that is similar to what the Road Commission or the City has in the right-of-way, but on Crooks Road to blend in with the scenery.

Mr. Verschueren suggested the case be postponed tonight and that both parties get together with the City and work something out and then return to the Board with their conclusion for a decision.

Chairperson Colling indicated that was his first recommendation, but he talked to staff and the reason the decision is back before the SBA tonight is that the two parties were unable to come to an agreement. He also pointed out to Mr. Everhart that he has a variance that is not permanent. Mr. Colling is inclined to put a condition on the variance that this is the last extension the Board is going to consider. He is also suggesting a reduction in square footage, but is willing to add another condition that if the Tim Horton is built and some other sign accommodation can be agreed upon by both parties, then the sign in the right-of-way will be removed.

It was also suggested that if the Tim Horton's monument sign needs to come before the SBA for approval, that the two parties work out the details before it comes to the Board.

MOTION by Verschueren, seconded by Duistermars, in the matter of File No. 06-013, that the request for the extension of variances from Sections 134-109(b), 134-115(a) and (c) of the Rochester Hills Code of Ordinances to allow one off-premises real estate sign to be located in the public right-of-way of Avon Industrial Road, west of Crooks Road, adjacent to the parcel identified as parcel number 15-29-228-004 be **APPROVED** for the applicant, Avon Star LLC, on behalf of GVA Strategies because competent, material, and substantial evidence does support the following affirmative findings with conditions:

Findings:

1. A special condition or circumstance does exist for this applicant in that the

property the sign advertises (the M-59/Crooks Business Park) does not front upon a major thoroughfare and has no visibility at the intersection of Avon Industrial Drive and Crooks Road.

2. Strict application of the provisions of this chapter would deprive the applicant of property rights commonly enjoyed by other properties in the same district.

3. Substantial justice will be done by allowing this approval. This approval will not be contrary to the public purpose and the general intent of the Sign Ordinance. Specifically, the sign will not endanger the public in terms of location and will assist the public in finding the area, and minimize traffic problems in that particular location.

Original Conditions:

1. This approval is granted for the period of one (1) year from April 10, 2013. Annual renewals of this sign permit will be authorized by the City's Building Department as set forth in Section 134-147 (Real Estate Signs) of Chapter 134 (Signs) of the City's Code of Ordinances. If the sign is still being renewed five years from April 10, 2013, a variance request must be brought back to the Sign Board of Appeals for review.

2. The sign must meet all Ordinances and requirements specific for a temporary real estate development sign.

3. The sign will be specifically for GVA Strategies for the M-59/Crooks Road Business Park.

4. The sign will be no greater than 35 square feet, as depicted on the plans dated received April 10, 2013.

5. The sign is to be located in the public right-of-way substantially as shown on the aerial example provided in the application, and subject to the City Engineering Department's approval.

6. The location must conform to all applicable Ordinances and laws.

Amended/Additional Conditions:

1. Two five year extensions of the subject sign are long enough; this variance will not be renewed.

2. The existing sign will be reduced to not more than 20 square feet in size within 45 days.

3. If during this five year extension period, Tim Horton's or any other business develops the bank site and plans are submitted to the Board for a monument sign including room for the business park signage that both parties agree to, the existing sign in the right-of-way will be removed.

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

Aye 6 - Brnabic, Colling, Duistermars, Kochenderfer, Koluch and Verschueren

Absent 1 - McGunn

NEW BUSINESS

2013-0354 **PUBLIC HEARING - FILE NO. 13-013**

Location: 1901 Clear Point Court, located north of Tienken Road, between Brewster and Livernois Roads, Parcel Identification Number 15-04-302-025, zoned R-2 (One Family Residential).

Request: A request for a 2.96 foot variance from Section 138-5.101T (Footnotes of the Schedule of Regulations) of the Code of Ordinances, which states the minimum rear yard setback requirement may be reduced to 30 feet on lots that border on land permanently dedicated for park and/or open space purposes. The submitted plot plan for a proposed addition indicates a rear yard setback of 27.04 feet, requiring a variance of 2.96 feet.

Applicant: Doug Selke
1901 Clear Point Court
Rochester Hills, Michigan 48306

(Reference: Staff Report dated October 3, 2013, prepared by Jim Breuckman, Manager of Planning, and associated documentation were placed on file in the Planning and Economic Development Department and by reference becomes part of the record thereof.)

Chairperson Colling read the request for the record, 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.

Mr. Doug Selke, 1901 Clear Point Ct., Rochester Hills, Michigan 48306, the applicant, came forward, introduced himself and Mr. Robert Clark, CBI Architects, 838 W. Long Lake Rd., Bloomfield Hills, Michigan 48302, the project architect. Mr. Selke indicated he wants to build a covered porch on the back of the house. After it was designed, it was realized that one corner of the roof will be 2.96 feet in violation of the setback requirement. He is asking for a variance for that corner. It is a southern facing porch receiving a lot of sun. That is the reason it will be covered - to be able to enjoy the porch when the sun is out.

Mr. Clark pointed out a typo in the application on page 2, under d) Unique Circumstances -- it refers to 90 s.f. of area, but that should read 9 s.f. of area. The unique circumstance of this property is that the property is triangular in nature resulting in that minor corner being clipped by the setback limits. We are trying to extend off of the corner of the house in an architecturally appropriate way that allows for an existing table and grill to be able to be used. Without the protection of a roof the deck has proven to be unusable, which is why the applicant has asked that something be designed that can be used with a shading device. The area of the currently existing deck is significantly larger than the proposed addition. The addition has been reduced in size as much as possible, going through several iterations to try to determine what the minimal size would be with the furniture considerations that he was asked to