



Rochester Hills

Minutes - Draft

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, Jayson Graves, Dale A. Hetrick, Charles Tischer

Wednesday, April 10, 2019

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 4 - Deborah Brnabic, Ernest Colling, Jayson Graves and Kenneth Koluch

Excused 3 - Bill Chalmers, Dale Hetrick and Charles Tischer

Quorum present.

Also present: Kristen Kapelanski, Manager of Planning
Robert White, Ordinance Supervisor
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

[2018-0591](#) October 24, 2018 Special Meeting

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

[2019-0149](#) February 13, 2019 Regular Meeting

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

COMMUNICATIONS

Planning & Zoning News dated February 2019

PUBLIC COMMENT

Chairperson Colling opened Public Comment at 7:02 p.m. Seeing no one come forward, he closed Public Comment.

NEW BUSINESS

2019-0150

PUBLIC HEARING - FILE 19-011

Location: 981 Allston Dr., located south of Tienken, west of Livernois, Parcel No. 15-09-201-018, zoned R-2 One Family Residential.

Request 1: A request for a variance of 10.91 feet from Section 138-5.101 (Average Front Setback) of the Code of Ordinances. The average front setback on the subject block is 61 feet. Submitted plans for a proposed addition indicate a front yard setback of 50.09 feet.

Request 2: A request for a variance of .41 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum side yard setback of 15 feet in the R-2 One Family Residential zoning district. Submitted plans for a proposed addition indicate a side yard setback of 14.59 feet to the addition.

Applicant: Robert Clarke
981 Allston
Rochester Hills, MI 48309

(Reference: Staff Report prepared by Ms. Kapelanski dated April 3, 2019 and various application documents had been placed on file and by reference became part of the record thereof).

Present for the applicant was Robert Clarke, 981 Allston Ave., Rochester Hills, MI 48309.

Mr. Clarke noted that two variances had been requested, the most significant of which was the one for the average front setback. The home was built in 1994, and he had been the only owner. When the home was built, the average front yard setback was 40 feet. At the time, he was told that he did not have to be any more than ten feet beyond the front setback or 50 feet, and that was where the home was set when it was built. The home was the last one built in the area, and it was carved out of the historic homestead on the corner of Tienken and Allston. He had purchased the property from that owner. The average setback shown on the site plan was based on using the home on the corner that faced Tienken as well as the two homes to the south of that. He was told by staff that the one facing Tienken would not be used, so staff's numbers were different than his. The homes immediately to the south of him extended significantly further to the west than his. His parcel was the minimum size for the district.

Mr. Clarke continued that the side yard variance was due to a couple of issues. Initially, the home had been set in error by the contractors at a

slight angle to the property line. He indicated that no one would really notice it unless there had been a survey. As he pulled the line forward, it crossed the corner of the south setback by .41 inches. He said that it was also complicated by a dimensional error in the construction that pushed the sidewall of the wood structure about 2 inches beyond the foundation line on the south face. They were trying to correct that and still plane out with the roof lines that existed. The combination of those items had created the .41-inch shortage for the setback. The remainder of the house to the rear angled in his favor, so it was compliant. That side yard was short approximately four inches in the front and tapered back to zero. It was a long, narrow taper that needed a variance. He commented that it would be easier for him to answer questions.

Chairperson Colling clarified that the home was built in 1994, and he asked staff if they had looked at the Ordinance from then and if it had changed. Ms. Kapelanski stated that they did not have the Ordinance from 1994, but the average front building setback provisions were changed about two years ago. The Ordinance referenced the established building line and ten feet as the applicant had indicated.

Upon questioning by Chairperson Colling, Ms. Kapelanski said that staff did not really have anything further to add. She felt that the applicant had summed the requests well. She noted that the standards for granting a variance were outlined in the staff report, and motions had been suggested.

Chairperson Colling said that he did not think that the lot was exactly square. He thought that the building plan could be adjusted by .41 inches, as it was fairly minimal. Mr. Clarke said that the problem was the planing out of the rooflines. He had a conventional roof. When the rooflines and the top wall plates were planed out, in order for him to step that back, he would have to change the planing out of all of the wall heights. He would not be able to capture the error that was made in the wall. The foundation was the dimension given, but the wall above it actually stuck out approximately two-and-a-half inches from where the dimensional number was on the survey. That had created the issue.

Chairperson Colling said that he understood that, but he felt that it was self-created when the home was built. It was not an engineering issue or fault with the property, which was why a variance would be given. There was a desire on the applicant's part to build that way, but Chairperson Colling did not see a compelling engineering fault; it was the way the home was built. That was not something for which the ZBA would

normally give a variance. They might give a variance for poor ground, for example, where something could not be built because the ground would not support a foundation.

Chairperson Colling asked if the setback required was 50 feet. Ms. Kapelanski said that 40 feet was required in the R-2 district, unless there was an average front setback on the block used, and that did apply in the subject case. Chairperson Colling said he was not sure the average front setback made a lot of sense because of how the properties were owned and built. The subject property was the last one built in 1994. He confirmed that it was the last one available, so the applicant was kind of stuck with what was available. That was a unique circumstance that he did not think fit with an average front setback. He said that he would be willing to accept a 50-foot setback for the front yard, but the side yard variance bothered him, because it would be compensating for something for which they normally would not give a variance.

Mr. Koluch read from the staff report, "The original documents show the residence aligned with the property line which, if constructed as designed, would not have needed a variance." He asked the reason the home went over four inches. Mr. Clarke said that the existing structure did not go over four inches. The projection of that line straight through was what kicked him over the .4 inches. At that time, they were not doing as-built stakings and things like that as they did today, so something was missed somehow while they were putting in the hole. Mr. Koluch asked if the subject property was included in the calculation of the setback. Mr. White agreed that it was. Mr. Koluch said that he read the minutes from May 2017 when they discussed an interpretation of established building line. There had been a difference between the illustration and the language. Prior to the new language being implemented, he asked if the ten feet was excluded at the end, but now it was subtracted from the total amount. It looked to him as if the petitioner at that time was denied because there was an issue in the calculations. They were taking ten feet off the back and not including that in the original averaging. He wondered if staff included the ten feet on top of the averages or if it was cut out at the back or how it was done.

Mr. White said that was the old way they did it, but it was confusing, so they made it simple. If the average front yard setback was more than ten feet further than the current code that would be the average front yard setback that had to be met. There was no subtracting ten. The subject case required 40 feet for the front yard setback, and the home was ten feet over that, so the average front yard setback came into play.

Mr. Koluch asked if the setback number would have been any different under the former Ordinance. Mr. White believed that the number started at 60 and ten feet was subtracted, which came to 50, since the houses to the south were setback 60 feet.

Chairperson Colling said that according to the aerial, the two houses to the south lined up with the primary structure if the garage was excluded from the subject home. That is, if the garage was excluded and it was compared with the two homes to the south, they pretty much aligned at 60 feet.

Mr. Koluch said that regarding the side setback, he realized what Chairperson Colling's position was, but Mr. Koluch felt that they needed to look at it as to whether it was going to be really expensive and a big problem for the applicant versus it being such a tiny sliver. He understood about past cases, but he felt that it was such a small amount, and the house was angled and should not have been built that way.

Chairperson Colling said that he understood, but he questioned what they would tell the people who had been denied in the past for less than six inches into a setback. If it was a situation where there was an engineering or reason other than an expense to the owner, or where there was a physical deformity on the lot that met the definition in the Ordinance, he could support it. However, it was purely a matter of a self-created instance. Granted, there were some mistakes when it was built, but that did not preclude the City from not granting a variance. He stated that it was a dangerous precedent. If they granted the subject request, anyone else who had a mistake when a house was built could ask for a variance and expect it to be granted to compensate. He reiterated that in his opinion, it would be a dangerous precedent to set.

Ms. Brnabic asked Mr. Clarke if he was aware of the error years ago made by the foundation contractor or if it just came up due to the fact that he wanted to put on an addition. Mr. Clarke responded that it just came up with the survey. Ms. Brnabic said that she saw Chairperson Colling's point, but she pointed out that there had been an error by the contractor that the applicant had not been aware until the property was re-surveyed. In that way, she did not think it was self-created. Chairperson Colling said that it was created at the time of the build. He claimed that there had been other properties in the City where mistakes had been made that they had denied variances, because they did not have the means to grant them. His concern was that if the variance was granted, as minimal as it

was, and as innocuous as it might seem, they would be opening it up for anyone else with a similar wish, even for a matter of inches or a half-a-foot. He asked where they should draw the line. They would be allowing a variance to be used to correct a construction mistake in the original build.

Ms. Brnabic said that as far as the front yard setback, she did not have a problem granting a variance due to the circumstances. She knew that lot averaging was used only on one side of the street. She also viewed the property and observed the homes across the street, which looked to be all set back about the same. The addition would be even with the garage, and she said that she did not have a problem granting that variance request.

Mr. Graves mentioned that Mr. Teon Sujak, the engineer for the project, used to work at his place of employment. Mr. Graves did not see that as a conflict of interest, but he wanted it disclosed. Chairperson Colling did not feel that it was an issue. Mr. Graves noted that Mr. Clarke had stated that he would have a hard time evening the roof with the overhang. Mr. Clarke said that it was the soffit and the wall heights on the inside. Mr. Graves asked what was on the inside that was creating the problem. Mr. Clarke said that as a conventional roof, the bird's mouth was set based on the wall heights that existed. In order for him to level the roof and keep it going all the way through consistently, he would have to modify the wall plates. Mr. Graves asked if he did not think he would be able to make it fit with conventional framing. Mr. Clarke said that it became a challenging scenario. Mr. Graves commented that it would be challenging, but not impossible. Mr. Graves agreed, and remarked that most things he did were not impossible.

Chairperson Colling said that he did not think that averaging was a good fit, and in that zoning district, the normal setback would be 40 feet, and they were at 50. They were including the two dissimilar, much larger properties that were developed at different times that had larger setbacks. He said that he supported the front yard setback variance. He did not think that would impede anyone's sight any further based on the position of the homes to the south. Regarding the side yard request, he understood Mr. Clarke's reasoning, and that it would be easier to do it how he wanted, but he did not find any physical reasons or an engineering issue with the property. It was the fact that Mr. Clarke wished to build a certain way. Chairperson Colling said that it was his position that it would not be impossible to build the house according to the Ordinance.

Chairperson Colling asked if there were any further comments. Hearing none, Mr. Koluch moved the following:

MOTION by Koluch, seconded by Brnabic, in the matter of File No. 19-011, that the request for a variance from Section 138-5.101 (Average Front Setback) of the Rochester Hills Code of Ordinances to grant a front yard setback variance of 10.91 feet, Parcel Identification Number 15-09-201-018, zoned R-2 (One Family Residential), be **APPROVED** because a practical difficulty does 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 the established building line will unreasonably prevent the owner from using the property for a permitted purpose, or will be unnecessarily burdensome.*
2. *Granting the variance will do substantial justice to the applicant as well as nearby property owners by permitting the expanded use of a residential home that is consistent with prevailing patterns in the nearby area.*
3. *A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.*
4. *There are unique circumstances of the property that necessitate granting the variance, and that distinguish the subject property from other properties with respect to compliance with the ordinance regulations. Specifically, the combined factors of a corner lot, smaller than average lot for the neighborhood, presence of a heavily treed neighborhood, siting of the home on the property and because the homes are spaced over 100 feet apart.*
5. *This variance is necessary for the preservation and enjoyment of a substantial property right possessed by any other property owner in the same zone or vicinity.*
6. *The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.*
7. *Approval of the requested variance will not impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.*

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

Aye 4 - Brnabic, Colling, Graves and Koluch

Excused 3 - Chalmers, Hetrick and Tischer

MOTION by Koluch, seconded by Brnabic, in the matter of File No. 19-011, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a side yard setback variance of .41 feet, Parcel Identification Number 15-09-201-018, zoned R-2 (One Family Residential), be **APPROVED** because a practical difficulty does 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 the established building line will unreasonably prevent the owner from using the property for a permitted purpose, or will be unnecessarily burdensome.
2. Granting the variance will do substantial justice to the applicant as well as nearby property owners by permitting the expanded use of a residential home that is consistent with prevailing patterns in the nearby area.
3. A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.
4. There are unique circumstances of the property that necessitate granting the variance, and that distinguish the subject property from other properties with respect to compliance with the ordinance regulations. Specifically, the combined factors of a corner lot, smaller than average lot for the neighborhood, presence of a heavily treed neighborhood, siting of the home on the property and because the homes are spaced over 100 feet apart.
5. This variance is necessary for the preservation and enjoyment of a substantial property right possessed by any other property owner in the same zone or vicinity.
6. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
7. Approval of the requested variance will not impair the supply of light

and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.

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

Aye 1 - Koluch

Nay 3 - Brnabic, Colling and Graves

Excused 3 - Chalmers, Hetrick and Tischer

Chairperson Colling stated for the record that there was a split decision. Mr. Clarke thanked the Board.

ANY OTHER BUSINESS

[2019-0154](#) Request for Election of Officers for 2019 - Chairperson and Vice Chairperson for a one-year term to expire the first meeting in April 2020.

Postponed

NEXT MEETING DATE

Chairperson Colling reminded the ZBA members that the next Regular Meeting was scheduled for May 8, 2019.

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals and upon motion by Graves, seconded by Brnabic, Chairperson Colling adjourned the Regular Meeting at 7:27 p.m.

Ernest J. Colling, Chairperson
Rochester Hills
Zoning Board of Appeals

Maureen Gentry, Recording Secretary