



Rochester Hills

Minutes

Zoning Board of Appeals

1000 Rochester Hills Dr
Rochester Hills, MI
48309
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Home Page:
www.rochesterhills.org

Chairperson Bill Chalmers; Vice Chairperson Kenneth Koluch
Members: Deborah Brnabic, Jayson Graves, Dale A. Hetrick, Jason Sakis and Charles
Tischer

Wednesday, August 11, 2021

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Chalmers called the Zoning Board of Appeals meeting to order at 7:00 p.m.

ROLL CALL

Present 7 - Deborah Brnabic, Bill Chalmers, Jayson Graves, Dale Hetrick, Kenneth Koluch, Charles Tischer and Jason Sakis

Quorum present.

Also present:

Kristen Kapelanski, Manager of Planning
Jennifer MacDonald, Planning Specialist
Bob White, Manager of Ordinance Services, Outgoing
Dave Smith, Manager of Ordinance Services, Incoming
Jodi Welch, Ordinance Inspector

APPROVAL OF MINUTES

[2021-0316](#) April 14, 2021 Regular Meeting

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

Aye 7 - Brnabic, Chalmers, Graves, Hetrick, Koluch, Tischer and Sakis

COMMUNICATIONS

None.

PUBLIC COMMENT

Chairperson Chalmers opened Public Comment for items not on the agenda at 7:03 p.m. Seeing no one wishing to speak and no email communications received, he closed Public Comment.

NEW BUSINESS**2021-0317 PUBLIC HEARING - FILE NO. 21-020**

Location: 3310 Longview Ave., located south of Auburn, west of Dequindre, Parcel No. 15-36-256-021, zoned R-4 One Family Residential.

Request: A variance from Section 138-5.100 Table 5 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum front yard setback of 25 feet in the R-4 district. The submitted plot plan indicates that the front yard setback to the proposed new home is 18.8 feet, which requires a variance of 6.2 feet to be built as proposed.

Applicant: Charles Stouffer
3310 Longview Ave.
Rochester Hills, MI 48307

Charles and Pam Stouffer, applicants and homeowners at 3310 Longview Ave., attended the meeting.

Ms. Kapelanski summarized that the applicant is looking to reconstruct their home on the existing foundation after the home was destroyed by fire, encroaching up to 6.2 ft. into the required 25 ft. front yard setback.

Mr. Stouffer thanked the Board for the meeting and noted he appreciated the assistance he received from Maureen Gentry in getting his application materials together. He noted that he has been on the Rochester Hills Library Board for 21 years, and there have been a lot of changes in the community since then. Mr. Stouffer said that he has been privileged to be able to help make the library the fantastic facility that it is today.

Mr. Chalmers stated that he appreciates Mr. Stouffer's service to the community.

Mr. Stouffer explained that his application is for a front setback variance to rebuild his home. He and his wife have lived there since 1984 until the house burned down due to suspected arson. He said that he had a burglary a week before the fire, and noticed some additional items that were missing after the fire. He was not aware of why the fire was started but the home was a complete loss. Everything they had left fit on the back of his pickup truck with plenty of room left over. Their home was not insured, they had let the insurance lapse and had a call from their agent to renew it right before the incident. Mr. Stouffer was a City firefighter for 11 years, and it was difficult to watch his own home burn. He noted that he and his wife would like to rebuild a similar home on the existing slab and foundation.

Mr. Chalmers noted that the applicant handed out an image of the façade of the proposed home that was not included in the packet, and noted it would be included as part of the application. He described it is a colonial design with red siding.

Mr. Stouffer noted this home was where they raised their children. They were there when the Brooklands was not considered the best neighborhood in the City, and they've watched the City grow to what it is today. Mr. Stouffer explained that the Brooklands has a fairly diverse range of home styles and very diverse setbacks, which add to the charm and character of the neighborhood. His grandparents built the third house in the Brooklands. There are two new homes under construction next to his property. Mr. Stouffer noted that with their insurance issue, they are rebuilding their home out of their retirement monies. Tearing up the existing foundation and building a new one when they have a perfectly good one already there would be a critical blow to them.

Mr. Stouffer stated that he is a builder and also built his father's house. In 1992 before the roads were paved, they obtained permits to build a garage on the property. Plans from that permit show a front setback of 27 feet, and they didn't move the house. He stated that when the roads were paved, it was clear that in the 1950s they put the road in the wrong place. The houses on the east side of Longview Ave. are set way back, and the houses on the west side are set closer because the road was 7-11 ft. further east from where they are. That puts them in a nonconforming situation where it wasn't anything of their doing. Frankly he would hope the ZBA would take into consideration that they didn't try to pull a fast one by tearing the house down and then ask if they could just use the same foundation. This was a disaster in their lives and they are just trying to make the best of it. He said that Bob White, City building official, provided two letters detailing how they figured the setbacks. He is of the opinion that they have an average encroachment of 6 ft. If you take into consideration some of the adjacent and nearby homes, it encroaches about 3.5 feet further than those homes. If you saw the house, you would see that it doesn't stand out, it doesn't encroach on the road. Mr. Stouffer noted that until the gardens got trampled and destroyed with the fire they had a beautiful garden area in the front with a stone walkway along the road and it was a delightful front yard. It is something that they are looking to recapture with rebuilding the house and using the same foundation so that they can keep this project moving forward.

Mr. Chalmers thanked the applicant for his presentation and asked for questions from the Board members.

Mr. Koluch asked the applicant if he had obtained any quotes, or had anyone assess if the existing foundation could be cut off in the front and then add to the back of the home. He asked if the detached garage still remains on the property.

Mr. Stouffer noted that he had not obtained any quotes for the work. He said that a few builders noted it would cost tens of thousands of dollars to address not only the slab but the footing underneath it, as it would not just be flat work. One builder told them it would cost in excess of \$18,000 due to the high price of cement but he had not seen the property. He noted that he would appreciate the ability to use the existing foundation since they would be paying for this work out of their own funds. He indicated that the garage is still on the property, as well as a playhouse which will be removed during their construction project.

Additionally he noted that two (2) trees will be removed.

Mr. Koluch stated that the house is situated on an angle from the street from looking at the plans, it is clearly not parallel as shown on the survey.

Mr. Stouffer stated that he did not think that the house is located on an angle, and referenced an old survey from 2009 that shows the house to be setback 19.5 ft. from the front property line, which is different than the current survey. He noted that he's not minimizing the accuracy of the survey that he provided with his application.

Mr. Koluch said that he was just looking to clarify the variance request, the angle of the home looks substantial. He asked if the house is located on an angle, whether the variance request would be for different amounts at different locations.

Mr. Chalmers explained that the front yard setback is measured from the property line to the closest point of the home, whether or not the structure is on an angle. He explained that clear information needs to be presented in order for the applicant to have a good chance for approval, and asked if the request needs to be anything other than the 6.2 ft. encroachment that was initially requested.

Mr. Stouffer said that during the Building department's review of his permit application there was an ordinance provision mentioned that in some situations the average setback of adjacent properties is taken into consideration. This calculation brought the encroachment down to approximately 3 ft.

Mr. Chalmers asked the applicant to verify that the encroachment would be no more than 6 ft. Mr. Stouffer agreed.

Mr. Hetrick asked Ms. Kapelanski to comment if there are any homes with similar setbacks in the vicinity of this home.

Ms. Kapelanski explained that the Brooklands in general have varying front setbacks as the applicant noted. In particular there are other homes that have similar lesser setbacks within the proximity of a few streets or so; however the new homes under construction are meeting the required 25 ft. setback.

Mr. Hetrick stated that he observed such conditions when he drove through the neighborhood. He asked the applicant to confirm that the hardship with his case would be that he would be incurring a substantial out-of-pocket cost if forced to comply with the ordinance by moving the foundation. He also asked the applicant if it was possible to move the foundation according to the contractors he consulted.

Mr. Stouffer noted that looking at the structure, he could not imagine that it would be impossible to move the foundation. However it would substantially add to the cost.

Mr. Hetrick asked if any contractors had noted whether or not the structure of the foundation itself would still be usable for construction of the new home.

Mr. Stouffer explained that they had not yet obtained an engineering quote for the project to ensure that the concrete is in satisfactory condition, since he was not sure if his request would be approved by the ZBA. He remarked that in his firefighting duties he had taken part in investigations over the years, and because of the house's wood floors the fire temperature must have been very high. However it did not affect the concrete, since there was no spalling, cracking, or other indications that the concrete had been compromised.

Mr. Hetrick asked if the slab of the home was on spread perimeter footings, which are wider around the perimeter than the structure's slab. He noted that to move the foundation would definitely add to the cost, but it would be easy enough to just cut the footings off and pour new footings to the east and west. With construction anything is possible, it just comes down to the cost.

Mr. Stouffer remarked that he wouldn't call it easy. He supposed that he could pick up the house and move it back 12 ft. but that would be financially difficult.

Mr. Hetrick clarified that he was not talking about picking up the house and moving it back, but about moving the slab foundation. He asked the applicant to verify that the rendering provided includes a covered porch.

Mr. Stouffer said there is a covered porch, which would be recessed from the front wall.

Ms. Kapelanski confirmed that the covered porch recessed into the house would be subject to the front setback of the home, and noted it appeared that the porch would meet the setback based on the design presented. Ms. Kapelanski suggested that if the Board were inclined to consider approving the variance this evening that a condition be added that the structural integrity of the foundation be evaluated. If for some reason it was found not able to be reused, then the current setbacks must be met. Mr. Chalmers added that the evaluation must be conducted by a professional engineer.

Ms. Brnabic remarked to the applicant that she was sorry for the loss of his home by a fire, which is devastating. She asked the applicant which fire stations he worked out of for Avon Twp. and then Rochester Hills.

Mr. Stouffer recalled that when he came home to find his house on fire, he knew based upon his experience that the firefighters would just prevent the fire from spreading to other homes and that it would be a total loss. He started at Station 3, then went to Station 4, and then to the Brooklands station when he and his wife purchased their house, and also Stoney Creek.

Ms. Brnabic noted she was concerned about the difference between the 6.2 ft. variance requested and Mr. Stouffer's mention of only needing 3.4 ft. She said that she was not aware that a lot averaging setback determination would be used in this circumstance.

Mr. Stouffer asked if the Board had both letters from Mr. White which discuss the differing setbacks. He said that he was not disputing the second letter, but

asked if there could be some consideration for using the setback identified in the first letter.

Mr. White explained that he initially looked at calculating the required front setback using the provision for an average front setback. The ordinance says that the required setback can't be less than 20 ft., so he was thinking that the variance would be from a required 20 ft. instead of 25 ft. He explained further that this provision means that when an average setback differs from the required setback by more than 10 ft. then you would use the average. He made a determination that the variance should be sought from a required front setback of 25 ft.

Mr. Stouffer asked the Board to consider that there are many exceptions to the required front setback in the Brooklands and what he is proposing would not be out of place or out of character, and it would not be sticking out further than other homes.

Ms. Brnabic noted that the current ordinance requirements apply for the request that is before them.

Mr. Stouffer asked for consideration to be grandfathered, since he didn't choose to burn his house down, and also for the consideration that his house was located in the right place for 60 years, and then the city moved the road. He explained that is where the road should have been located; that was used as the front yard for the existing homes and was established at that distance and the City changed that.

Ms. Brnabic commented that she's concerned obviously the applicant's hardship is the fire and the expense of having to replace the foundation; however he did not even proceed to get an actual estimate of what that expense would be. In regard to the setbacks of the older homes in the community that are grandfathered, they are allowed to keep the grandfathered status unless their homes are demolished. Ms. Brnabic read ordinance Sec. 138.3.104 Nonconforming Structures C. Reconstruction: "Nonconforming structures that are declared to be physically unsafe by the building official or otherwise damaged or destroyed by any means to an extent that the repair cost is greater than the assessed value of the structure shall not be restored, repaired, or rebuilt except in complete compliance with the requirements of this ordinance." She noted that years ago this ordinance changed, it previously stated that if a fire destroyed it to a certain percentage, it would have to be reconstructed in conformance with the ordinance. She expressed concern that if this request was granted it may set a precedent for other homes in the Brooklands that have similar setbacks and also for front setback variances across the City. If for any reason any of these homes were considered unsafe, destroyed by fire, or by other means, or if someone just decided their home was old and in disrepair and they decided to demolish it, they could come back with this request, and due to the cost and the setback say that they should be able to build their home and do something similar to what this applicant requesting. Ms. Brnabic asked for confirmation that the applicant's home was assessed at less than \$100,000 and to rebuild would cost less than that amount.

Mr. Stouffer appreciated that he should have obtained an estimate. He noted taking the spirit of the former ordinance that Ms. Brnabic mentioned, his cost to rebuild would be far less than the assessed value of the home. He said that he was in possession of 96% of the stick wood that he would need for construction which he obtained at no cost.

Ms. Brnabic asked if the applicant would be able to rebuild his entire home for less than \$102,000.

Mr. Stouffer confirmed that amount if he did not have to pay for a new foundation. He explained that he already had all of the insulation for the new home, through penny pinching and perseverance he was able to acquire many of the materials that he would need at no cost.

Ms. Brnabic said that sounded cheap based upon today's standards. She noted that the homes that are under construction next to this home have to meet the current setback requirements. She commented that she had no way of verifying the cost of a new foundation, only that it would add to the cost of the construction.

Mr. Stouffer understood that the typical impression would be that it would cost \$150,000 to build; however based on his budgeting it would not cost that much.

Mr. Chalmers commented that a total loss is a total loss, and the requirement is to comply with the current ordinance. He said that the Rochester House on Crooks kept two walls of the original building so that they didn't have to meet the setback requirements during rebuilding. He asked to applicant to confirm if he would be able to construct the new house for \$100/sq. ft.

Mr. Stouffer said that it would be about \$120-\$130/sq. ft.

Mr. Chalmers said that \$125 is not unreasonable, since costs are reduced if the homeowner is the builder also.

Ms. Brnabic said that brings the discussion back to the fact that with rebuilding the current ordinance requirements must be met.

Mr. Stouffer noted that does not take into account the cost.

Ms. Brnabic commented that she is conveying her concern that with so many homes across the City this may be setting a precedent that if a home is destroyed by fire, the Board has to allow a setback encroachment. She explained that her job is to protect the integrity of the ordinance and there are certain criteria to follow in determining whether to approve a variance, although she may feel differently personally. She asked Ms. Kapelanski specifically how many homes in the area had been granted setback variances.

Mr. Stouffer noted that he appreciated Ms. Brnabic's concerns, but as a resident of the Brooklands he didn't want to have a house that would stick out like a sore thumb. He appreciated that the Board must evaluate requests for the good of the City; however it is also the purpose of the ZBA to consider

nonconformities, it's not an easy decision.

Ms. Kapelanski noted she was speaking in general terms about the varying setbacks in the Brooklands.

Mr. Graves thanked the applicant for his service to the City. He noted that he has empathy for the applicant's position and what happened to his family. He explained that their task is trying to find the practical difficulty, and that doesn't mean problems with constructing the foundation, rather it means something specific about this piece of property that necessitates a variance. Mr. Graves commented that the older survey piqued his interest at first; however he noted the differing opinions by surveyors. He found it interesting that the 1992 survey showed a 27 ft. setback but the property depth was still 135 ft., and he guessed that the rear property line was not changed at that time.

Mr. Stouffer explained that when he had that survey done, he did it inexpensively because he only needed the front setback and didn't need other measurements that were not pertinent at the time. It's possible that because they were focusing on the front wall of the home, they didn't even check the back wall, the measurement may actually be 142 ft.

Mr. Chalmers said that Mr. Graves is saying that the survey that Apex performed showed 135 ft. of lot depth. The survey from 1972 shows 135 ft. of lot depth and also the 27 ft. front setback, they were probably measuring to the centerline of the road.

Mr. Sakis asked if there was any insurance payments for the losses that they suffered, and asked the applicant's field of employment. He asked if they are intending to seek any financing as part of this project.

Mr. Stouffer remarked that since they did not have insurance they did not receive any payment for their losses, which included about \$35,000 in antique watches; approximately 3,000 books about 100 of which were at least 100 years old, including an original signed copy of 1984; and artwork. He explained that now he's heading into retirement, but he has been a commercial photographer for 40 years. He noted that they were not intending to seek any financing.

Mr. Sakis said that he was wondering if they would be seeking financing, since the additional cost of moving the foundation would not be that much of a hardship in that case, and he was not intending to be insensitive. He noted that it might even make the house more valuable to move it back. Mr. Sakis asked if there were other structures in the rear yard other than the play structure.

Mr. Stouffer noted that they had a playhouse that his son previously used, a tool shed, a garage, and boats. He said that they've lived at the home for 36 years.

Mr. Tischer asked the applicant if he would still move forward to rebuild his home if their variance request is denied tonight.

Mr. Stouffer said that he did not know and had not considered what the cost would be, but it had been a great place to live other than the house burning down

and they need to have a place to live. He said that there is a suspect for the burglary.

Mr. Tischer asked Ms. Kapelanski if the home is currently off the tax rolls.

Ms. Kapelanski noted the home should be off the tax roll because of the fire, but she believes the land would still be taxed.

Mr. Chalmers told the applicant he is grateful for his service on the library board and as a firefighter. He noted that they need to look at every possible angle with regard to this request. He asked Ms. Kapelanski if there has been any previous precedent set with regard to a front setback variance in the Brooklands.

Ms. Kapelanski noted that staff did not find any similar situations with a front setback variance granted as a result of fire or any similar situation. However, setback variances have been granted in the Brooklands for a variety of other reasons. There are a lot of smaller lots in the community, and there have been exceptions for narrow lots, for example.

Mr. Chalmers noted that the Board has denied many variances since they need to preserve the character and integrity of the ordinance, and any request must be carefully considered. And because of this, there is not a mishmash around town of setbacks and signs.

Mr. Chalmers opened the public hearing for comments, and asked anyone wishing to comment to fill out a form. There being none he closed the public comment portion of the meeting.

Mr. Koluch explained that he is in favor of this request and did not think approving this variance would be an issue with setting a precedent, since there haven't been other situations as a result of a fire like this one. He noted that if there was an insurance company involved they would likely cover the cost of moving the foundation back to meet the setback. He said that this is a pretty unique situation to have an uninsured house, the new house will be the same size, and there is already a variety of houses in this subdivision with differing setbacks.

Mr. Hetrick noted that he is in favor of approving the request for the same reasons that Mr. Koluch detailed. He explained that the fact that the house was destroyed by fire is a unique circumstance. He referred to one of Ms. Brnabic's concerns that if this variance was approved, whether it would give someone the incentive to destroy their home and rebuild it on the same setback, and he doesn't think that approving this variance would allow that to occur. Also the fact that there would be additional costs incurred with moving the foundation gives credence for a financial hardship to allow for the variance. He noted he was concerned that there was no insurance on the house.

Mr. Stouffer remarked that he had spoken to people during the pandemic who were considering not having insurance, but he told them they should not do that.

Mr. Hetrick said that he was trying to provide commentary so that they could

move forward. He noted that since the house is slanted slightly there is a portion of the home that would encroach considerably less than 6.2 ft. and this should be a part of the Board's consideration.

Mr. Graves noted that any approval of this request needs to include the statement that Ms. Kapelanski discussed about the review of the foundation slab prior to moving forward with the permit.

Ms. Brnabic noted that they do have the circumstance in regard to this home being destroyed by fire. She asked the Board if they would be that specific with a motion and note the circumstance of the hardship of the home being destroyed by fire to keep this from setting a precedent.

Mr. Hetrick agreed that the language should be used about the home being destroyed by fire.

Mr. Chalmers commented that he was leaning toward approving the request but wanted to hear from anyone who has comments or reservations. There were no additional comments and Mr. Chalmers closed the discussion.

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

Aye 7 - Brnabic, Chalmers, Graves, Hetrick, Koluch, Tischer and Sakis

Resolved, in the matter of File No. 20-020, that the request for a variance of 6.2 feet from Section 138-5.100 of the Rochester Hills Code of Ordinances to allow construction of a home to be located 18.8 feet from the front property line for 3310 Longview Ave., Parcel Identification Number 15-36-256-021 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. 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.
2. 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.
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 as described in criterion 1. above, that distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations, in that the prior structure was destroyed unintentionally by fire rather than by the homeowner for the intentional purpose of reconstruction.
5. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
6. 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.
7. There are many properties in this subdivision with front yards abutting streets that are less than the required front yard of the district.
8. The applicant must submit an engineering report showing that the existing foundation

is found to be safe and sufficient for use in the construction of the new home, prior to issuance of a building permit.

ANY OTHER BUSINESS

None.

NEXT MEETING DATE

September 8, 2021

ADJOURNMENT

There being no further business to discuss, Chairperson Chalmers adjourned the meeting at 8:03 p.m.

Minutes prepared by Jennifer MacDonald.

Minutes were approved as presented/amended at the _____ 2021 Regular Planning Commission Meeting.

Bill Chalmers, Chairperson

Jennifer MacDonald, Recording Secretary