



# Rochester Hills

## Minutes - Draft

### Zoning Board of Appeals

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Rochester Hills, MI  
48309  
(248) 656-4600  
Home Page:  
[www.rochesterhills.org](http://www.rochesterhills.org)

*Chairperson Ernest Colling, Jr.; Vice Chairperson Kenneth Koluch*  
*Members: Deborah Brnabic, Dane Fons, Dale A. Hetrick, Michael McGunn, Ryan Schultz*

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Wednesday, July 13, 2016

7:00 PM

1000 Rochester Hills Drive

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## CALL TO ORDER

*Chairperson Colling called the Regular Meeting to order at 7:05 p.m. in the Auditorium.*

## ROLL CALL

**Present** 5 - Deborah Brnabic, Ernest Colling, Dale Hetrick, Kenneth Koluch and Ryan Schultz

**Absent** 2 - Dane Fons and Michael McGunn

*Also Present: Sara Roediger, Manager of Planning  
Sandi DiSipio, Recording Secretary*

## APPROVAL OF MINUTES

[2016-0271](#) June 8, 2016 Regular Meeting Minutes

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

**Aye** 5 - Brnabic, Colling, Hetrick, Koluch and Schultz

**Absent** 2 - Fons and McGunn

## COMMUNICATIONS

*Planning & Zoning News - June 2016 issue*

## PUBLIC COMMENT

*No public comment was heard.*

## NEW BUSINESS

[2016-0270](#) **PUBLIC HEARING - FILE NO. 16-014**

Location: 3175 S. Rochester Road, located on the southeast corner of Rochester and Auburn Roads, Parcel Identification Number 15-35-100-053,

zoned B-3 (Shopping Center Business) with an FB-3 Flex Business Overlay, and known as Meijer.

Request: A variance from Section 138-4.410.A (Drive-Through Facilities) of the Code of Ordinances, which prohibits drive-through facilities and structures separate from the primary structure. Huntington Bank, located inside Meijers is proposing a stand-alone ATM structure in the parking lot.

Applicant: Christopher Humphrey  
Humphrey Architects  
4495 Millwater Dr.  
Powell, OH 43065

*(Reference: Staff Report dated July 7, 2016, prepared by Sara Roediger, Manager of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)*

*Chairperson Colling stated for the record he has an account with Huntington Bank, and his wife once worked for the bank in Columbus, Ohio. Beyond this, he has no affiliation with the bank and does not feel there is a conflict of interest.*

*Chairperson Colling then read the request for the record, and asked the applicant to come forward and provide a summary of the request.*

*Mr. Christopher Humphrey, Humphrey Architects, 4495 Millwater Dr., Powell, OH 43065, the applicant, introduced himself and stated the relief he is asking for is that the zoning code states that a drive-through facility has to be attached to the main building and located on the side or the rear, back from the front of the structure. The situation is that this is a big box retailer on 32 acres of ground and to have the ATM attached to the building would be a disadvantage to its use - for accessibility and visibility. Both of these disadvantages lend to a lack of security if the ATM was on the side or the rear of the building. Two sides of the Meijer structure are truck docks and loading areas, and the other side is the garden store. To have an ATM attached on one of those sides would be asking the ATM users to co-mingle with trucks and the multitude of people going in and out of the store. The proposed location, even though it is in front of the Meijer store and not attached to the Meijer store, is well behind the fronts and sides of the buildings that front the main highways. He feels there is a real security problem with forcing the ATM to be located on the rear of the store. He doesn't think that the zoning ordinance took this into account when it was written. If this was a branch bank in a neighborhood located on a 3/4 acre lot, a drive-through on the building would be natural. He feels the drive-through is an unnatural and unwise situation for the subject location.*

*The Chair called for a summary of the staff report.*

*Ms. Roediger indicated the staff report contains the analysis of the five criteria the ZBA is bound to uphold, including substantial justice, ensuring there is not unnecessary burden by denying the variance, unique circumstance, not self-created and that the public health and safety will still be preserved. As the applicant has indicated, this site was developed a while ago as a typical big box*

retail, and now they are trying to retro-fit it with more current trends and shopping preferences. This site probably did not anticipate this type of use. Included in the packet are a few street views of the proposed location for the ATM. The site has ample parking and there is space to in-fill and retro-fit the site.

**Chairperson Colling opened the public hearing at 7:12 p.m.**

Mr. John Przybysz, 3120 Primrose Dr., Rochester, MI 48307, came forward, indicated he lives directly behind Meijer and stated they overdeveloped the whole area. The applicant is asking for a change in the ordinance and another variance. Mr. Przybysz asked the Board to keep the City's ordinances in effect.

**There being no others wishing to speak, the public hearing was closed at 7:15 p.m.**

The Chair opened the floor for Board comments.

Mr. Koluch indicated it appears there would be two ATM's on either side of the parking lot - one for TCF Bank and the proposed ATM right on the other side. He is certain the ATM will help Huntington Bank's business, but doesn't feel it's necessarily Meijer's fault when reviewing a self-created problem. He does not see the criteria test being satisfied, particularly the first criteria - it's not preventing the owner from using the property it's sitting on. Huntington Bank can still operate without the ATM.

Mr. Colling feels there is no where on the Meijer's building to build an attached ATM that would not pose risk to the individuals using it. You would have security issues because you have people walking by all the time. The rear of the building facing Lowe's is almost invisible from the road and he feels that an ATM might be creating a predatory trap for criminals to the citizens. He is not fond of an ATM in the rear. It is not unusual to have two ATM's in any given area. He feels the proposed location is the least intrusive in the parking lot and it provides good ingress/egress from both Rochester and Auburn Roads. He does not think this is self-created from the standpoint of changing trends. He does not see where an ATM could be attached to the building that would not interfere with traffic or expose the users to undue risk from too much foot traffic. The proposed ATM will be well lit, highly visible and safe for users. Mr. Colling has no objection to granting this variance.

Mr. Hetrick agrees with Mr. Koluch in that he does not see the practical difficulty in this situation and feels it is a self-created problem. You can have an ATM inside the building. Based on the applicant's description and the test for practical difficulty, this is more self-created than it is an ordinance issue.

Mr. Humphrey stated he does not feel it is self-created because of an "oranges/apples" situation here. The orange being a walk-up ATM inside the building which is already existing, and the apple being a drive-up ATM. People who want a drive-up ATM are not going to look for a walk-up ATM and vice-versa. As far as the statement about denying the variance doesn't deny Huntington from doing business - it does. It denies them from having an ATM

*at the proposed location. ATM's are big business. Having the TCF ATM near the Huntington ATM is big business because a lot of the TCF people will use the Huntington Bank's ATM and pay the non-member fees.*

*Mr. Hetrick indicated a drive-up ATM is OK as long as it's a stand-alone bank, which is not the case tonight. We now have an apple/orange situation comparing TCF Bank to a stand-alone ATM.*

*Mr. Humphrey said he is not comparing the TCF Bank to a stand-alone ATM - he's comparing the TCF branch to the branch inside the Meijer's store.*

*The Board interjected this is not a stand-alone branch; it's inside Meijer.*

*Mr. Colling added he thinks the issue is one of preference. As a bank customer, he goes to the ATM because he doesn't want to enter the stand-alone facility. Bank users are asked to enter Meijer's because that is where the bank is, versus using an outside facility without having to go through the crowds and traffic. He understands it appears to be somewhat self-created but at the same time, a lot of the issues the Board considers with businesses are self-created. We will see more of these requests as banks and other facilities propose to do the same. The ZBA should consider if this is a trend that's coming. He believes it is.*

*Mr. Hetrick added if this is indeed a coming trend, let's adjust the ordinance to allow some conditional use of these trends. The Board should make the change to the ordinance, not grant a variance that someone else could ask for. He is concerned about setting precedent for other big box organizations to do the same thing that may not have a good place to put a stand-alone ATM.*

*Mr. Humphrey agrees that the ordinance needs to be fixed because it is a broad-brush ordinance saying everything from a 3/4 acre development to a 32 acre development falls under the same paragraph about ATM's being attached to a structure. He doesn't want to wait for the ordinance to be changed. Mr. Humphrey does not feel this situation is self-created, as he thinks if the ATM was on the site plan when the Meijer was approved, it would have been approved.*

*Mr. Hetrick is still not of the view there is a practical difficulty - this is a want rather than a need. You don't need a drive-through ATM.*

*Chairperson Colling brought up the variances granted the Rochester Road dealerships to allow them to encroach into the right-of-way and indicated it was a decision by the ZBA to facilitate business in the City. He feels this is the same precedent the Board has already crossed in this case. This variance is to facilitate more business in the City. It just happens to be on the Meijer property and not further up Rochester Road.*

*Ms. Brnabic commented this situation is not putting someone out of business, and the dealerships had no choice as they had to comply with what corporate dictates.*

*Mr. Colling suggested this could conceivably drive people away from the bank because they have to go inside the Meijer store. This could cause the bank to close within the store. This is the same basic premise. He would rather see the ordinance changed, as more variances will be requested for the same reasons.*

*Mr. Humphrey asked if the Board has ever granted or denied this same variance.*

*The Chair responded this is the first time this request has ever come up.*

*Ms. Brnabic thinks the drive-through ATM may be a move of the future, but feels we're back to reviewing and amending the ordinances if that is the case. When Meijers came through with their site plan, there probably was no vision of a bank being in the structure. The primary use of Meijer is Meijer retail, they don't even have a drive-through for their pharmacy. She commented the applicant should have known what the ordinance was when they chose to lease the space for Huntington Bank. She does not see a unique circumstance in this case, feels the Board will set precedence in this situation and would rather see the ordinance reviewed and amended.*

*Mr. Humphrey said the Board should consider that the bank is a retail use, as they sell financial products. He also commented most banks are not stand-alone, there are a lot of Walmart, Meijer and Kroger stores that lease space to banks. Brick and mortar banks don't make money they way they used to. Banks could probably operate without a building.*

*Ms. Brnabic added that trends can come and go, and she doesn't want to grant a variance based on a possible trend for the future. Denying the variance will not prevent Huntington from using the property without a drive-through.*

*Mr. Humphrey noted the denial will not prevent Huntington's presence on the property, but it is going to prevent them from having a drive-up ATM. He can't believe he'd come back with a site plan showing a drive-through attached to the building and Planning Commission approving it.*

*Ms. Brnabic said the Commission might not approve it because of the safety issue.*

*Chairperson Colling inquired if at one time Meijer was contemplating a gas station on the property. Plenty of Kroger's have gas stations on their property. A trend is happening and the City needs to move forward and update the ordinance.*

*Ms. Roediger indicated she does not know the answer about a proposed gas station, but did want to bring to the Board's attention Planning Commission and Council recently approved a drive-through curbside pick-up for Meijer at the northeast corner of the building. So currently there is a drive-through on the building that is not reflected in the aerial photos.*

*From Mr. Schultz's standpoint, he feels the situation is that we're looking at traditional bricks and mortar banking becoming almost functionally obsolete.*

*What you have now is an evolutionary trend in banking. It would be nice to have an ordinance that stayed current with the trends, but that is very difficult to do. If the ZBA granted the variance to this unique situation, where a trend has been identified, it stays with the subject property; it doesn't open the window of maybe drafting an ordinance which says a trend has been identified, and then having multitudes of people applying for the same variance. He asked the applicant if he will have a fiber-optic cable that connects the ATM system to the bank branch in the building.*

*Mr. Humphrey responded no. The ATM will have separate electrical service and will be serviced by an armored car company, there will not be personnel from the bank serving the ATM.*

*Mr. Schultz asked if the ATM would be on a ground lease from Meijer, to which the applicant responded no, it's an amendment to the license for the bank inside.*

*Mr. Humphrey is not sure this is a trend, and if it is, how long will it last. Banks are not going away.*

*Mr. Schultz feels what the applicant is asking for is a convenience option for this site that is unique to this banking situation and that is not blanketly applied across the community.*

*Mr. Humphrey would like to say it could be applied across the community for big box areas, but doesn't see a branch bank or a neighborhood ground-up bank requesting a remote building.*

*Mr. Colling said the only opportunity he sees for this type of situation to occur is at the four big box locations in the City. He doesn't see a bank going into a Lowe's or a Home Depot only because the traffic pattern does not lend itself to that type of business. If a large stand-alone grocer came in, it could happen there. He continually sees businesses combining on the same parcel. He would agree with changing the ordinance if he thought this was going to be a situation that will apply to hundreds of locations within the City, but he doesn't think it is. It is unique from the standpoint that there are only four sites that would qualify as a big box retailer. He does not feel granting the variance will set a precedent.*

*Mr. Koluch is still struggling with the fact that Huntington is not being prevented from using the property - the Meijer is open 24 hours and anyone can go in and use the inside ATM. There is also an ATM at the TCF Bank.*

*Ms. Brnabic does not find the situation totally unique.*

*Mr. Koluch commented Red Box is pretty trendy now - they could decide they want to install a drive-up location in the middle of the parking lot, so people don't have to go inside Meijer.*

*Mr. Schultz feels Red Box is a fine example and if Red Box had a concept where they wanted to install drive-through locations, he would support that. He*

*struggles with trying to limit convenience and trying to create the perfect ordinance, because the perfect ordinance doesn't exist. He has no problem supporting this request.*

*Chairperson Colling pointed out the difference between last month's decision and tonight's hearing is that in last month's decision we had an ordinance that covered what was requested, but didn't extend down to that portion of Rochester Road - that was a simple fix. This case is not like that, there is no simple fix, it's a total rewrite of the ordinance.*

*Mr. Koluch indicated the applicant can locate the ATM on the side of Meijer even though it may not be easy or the best way to do it - but it is a fix.*

*Mr. Colling does not believe Meijer's will give up part of their garden center to allow the ATM. An ATM will also cause a situation with pedestrian traffic on the north side of the building. Stringent security measures would be required on the south side of the building.*

*Mr. Hetrick said he is still struggling with convenience being a trend that may not last. What happens to the ATM when the convenience goes away.*

*Chair Colling suggested a condition could be placed on the variance, or in the ordinance, that if the ATM is no longer being used, it will be removed.*

**Mr. John Przybysz, address previously given, returned to the podium.** *He added he has seen trucks remove ATM's. This can't happen if it's attached to the building. Car jacking will happen at ATM's. People can always go inside to the bank. He feels changing the ordinance will open a can of worms, and asked the ZBA not to change it.*

*Mr. Humphrey pointed out he is not here to ask for a change in ordinance, only a variance.*

*Chairman Colling noted the discussion of the Board is what's the better move - the variance or a change in ordinance.*

*The Board recessed from 7:53 to 7:57 p.m.*

**MOTION** by Koluch, seconded by Hetrick, in the matter of File No. 16-014, that the request for a variance from Section 138-4.410.A. of the Rochester Hills Code of Ordinances to allow a stand alone ATM drive-through facility within the existing Meijer parking lot, for 3175 S. Rochester Rd., Parcel Number 15-35-100-053 be **DENIED** because a practical difficulty does not 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 of the Zoning Ordinance will not prevent the owner from using the property for a permitted purpose in a reasonable manner without a drive-through facility.*
- 2. The problems are self-created by the property owner in the form of the*

*applicant's desire to construct a detached drive-through structure that does not meet City Ordinance requirements.*

*3. The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future. The granting of this variance could encourage further incursions upon the Zoning Ordinance which would result in further variances being considered by the Zoning Board of Appeals and could be construed as removing the responsibility of meeting the Zoning Ordinance from applicants.*

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

**Aye** 3 - Brnabic, Hetrick and Koluch

**Nay** 2 - Colling and Schultz

**Absent** 2 - Fons and McGunn

***MOTION*** *by Koluch, seconded by Brnabic, to seek resolution through request to the Planning Commission for ordinance review to evaluate the criteria for drive-through facilities, Section 138-4.410.A. of the Code of Ordinances.*

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

**Ayes** 4 - Brnabic, Hetrick, Koluch, Schultz

**Nays** 1 - Colling

**Absent** 2 - Fons and McGunn

## **ANY OTHER BUSINESS**

*No other business was brought forward for discussion.*

## **NEXT MEETING DATE**

*The next Regular Meeting is scheduled for August 10, 2016.*

## **ADJOURNMENT**

*Chairperson Colling adjourned the meeting at 8:05 p.m.*

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

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*Sandi DiSipio, Recording Secretary*

