



Rochester Hills

Minutes

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, Dane Fons, Dale A. Hetrick, Michael McGunn

Wednesday, March 8, 2017

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 5 - Bill Chalmers, Ernest Colling, Dane Fons, Dale Hetrick and Michael McGunn

Absent 2 - Deborah Brnabic and Kenneth Koluch

*Also Present: Sara Roediger, Interim Director of Planning
Jack Sage, Ordinance Enforcement
Sandi DiSipio, Recording Secretary*

APPROVAL OF MINUTES

[2017-0108](#) December 14, 2016 Regular Meeting Minutes

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

Aye 5 - Chalmers, Colling, Fons, Hetrick and McGunn

Absent 2 - Brnabic and Koluch

[2017-0109](#) January 11, 2017 Regular Meeting Minutes

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

Aye 5 - Chalmers, Colling, Fons, Hetrick and McGunn

Absent 2 - Brnabic and Koluch

COMMUNICATIONS

Planning & Zoning News - December 2016 and January 2017 editions

PUBLIC COMMENT for Items not on the Agenda

No public comment was heard.

NEW BUSINESS

2017-0098

PUBLIC HEARING - FILE No. 17-003

Location: 260 Winry Dr., located on the north side of Winry Dr., south of Tienken Rd. and west of N. Pine St., Parcel Identification Number 15-10-205-037, and zoned R-4, One Family Residential.

Request: A request for a variance of 4.7 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum side yard setback of 10 feet in the R-4, One Family Residential Zoning District. Submitted plans for a proposed addition and attached garage indicate a side yard setback of 5.3 feet.

Applicant: David & Wendy Taylor
260 Winry Dr.
Rochester Hills, M 48307

(Reference: Staff Report dated March 2, 2017, prepared by Sara Roediger, Interim Director of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

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

David & Wendy Taylor, 260 Winry, the applicants and homeowners, came forward introduced themselves and gave a summary of their request. They are asking to put a family room addition and attached garage on the house, which requires the side yard setback variance.

Chairperson Colling asked if there are any extenuating circumstances or practical difficulties that require the variance.

Ms. Taylor explained the lot is of a size that in order to attach the two car garage, a variance is required. There are several homes in the subdivision that already had this variance approved and the owners completed additions to their home. The proposed addition is behind their home and not near the next door neighbor's home or the house behind them.

Mr. Colling asked if there is any practical difficulty in the building envelope or the lot itself that would require a variance to build - does anything prevent the applicant from building within the allowable footprint.

Ms. Taylor replied yes. Mr. Taylor stated the subdivision is probably the smallest one in Rochester Hills. The frontage is 60 feet, the house is approximately 38 feet wide sitting within 20 feet of each side of the lot. There is no way to construct an attached two car garage and still maintain the required setback between the property line and the garage. The lots are too small to keep a 10 foot setback.

Chairperson Colling indicated this is not unique to this specific area. He lives in the Brooklands and their lots are also 60 feet wide. This lot size is not uncommon throughout the City. He is looking for a practical difficulty, e.g., an engineering defect, or the soil or some geographical feature of the property that prevents the applicant from building within the allowable building envelope. The property as described does not have a practical difficulty.

Ms. Taylor commented you couldn't pull a car into a two car garage if it was behind the house, it has to be next to the house.

Mr. Colling said he has a two car garage behind his house, although it is detached.

Mr. Taylor pointed out they are looking for an attached garage to age in place, and Ms. Taylor said they would like the house all on one story.

The Chair again asked if there is any practical difficulty or anything that can be described, other than it's something the applicants want to do.

Mr. Taylor said there is a nice sized tree in the backyard that prohibits building any further to the west of the property. Also, the way the house is laid out, there would not be an access point into the dwelling if the garage was behind the house. The problem is the attachment. Ms. Taylor explained she has MS, and she is concerned about getting in and out of the house in the future, as going up and down steps is not easy. If they could put something on the house that would get her into the garage it would be a lot easier than dealing with in and out, up and down steps.

Chairperson Colling then called for a summary of the staff report.

Ms. Roediger clarified the staff report summarizes the criteria that the ZBA is bound to consider, one of which is substantial justice - making sure something special will not be conveyed to this property that is not shared with other property owners in the area. The homes in this area are all very similar in size, about 1,000 square feet. Over the years, there have been a number of variances granted for this exact request. In staff's quick search, four variances on Winry or Thalia have been granted for this exact situation - to allow an attached garage with a 5 foot variance off the side yard. If you look at the overall development patterns of this particular subdivision, it is pretty common. The aerial map shows the two houses west of the subject property, as well as the two houses north of it, all have similar configurations. It would be somewhat consistent with development patterns of this neighborhood over time. As far as unique circumstances, while it may not be unique to the subject parcel specifically, the neighborhood is somewhat unique in the City in that it has this development pattern over time.

Mr. Colling commented in his years on the Board, the members have generally denied similar setbacks throughout the City. If there is not a practical difficulty or engineering precedent, essentially it becomes a situation where the Board is granting a variance based upon the homeowner's request versus need. He does remember one side or rear yard setback variance granted for a property

that had a very steep ravine off one side of the house that precluded them from building in that particular area without extensive engineering re-work. The Board has actually turned down homeowners for additions of one foot into the setback. He is reluctant to grant this request, even though some variances have been granted in the neighborhood. He asked about the previous four variances that were granted.

Ms. Roediger indicated staff talked about producing the minutes from these variances, but they took place back in the 70's and 80's. The minutes are on microfiche and are not very legible. The addresses are 330 Winry, 428 Winry, 287 Winry and 376 Thalia - they all received approval of their variance requests for 5 or 6 foot side yard setbacks.

Mr. Colling asked if the zoning ordinances have changed significantly since that timeframe.

Ms. Roediger replied no and clarified she went back and reviewed the ordinances from the 70's and they all maintained a 10 foot side yard.

Chairperson Colling is rather reluctant to grant this only from the standpoint that the Board has denied other homeowner requests in the past for this situation. Even though variances were granted in the 70's and 80's, in his 20 years on the Board, these types of requests have been denied.

The floor was opened for Board discussion.

Mr. Hetrick stated that based on Ms. Roediger's comments on precedence already being set by granting variances in the past, he is more inclined to grant this variance given that the applicant is doing something that is consistent with what their neighbors have already accomplished. He noted the homes adjacent to the subject property appear to have setbacks that are less than 10 feet. While the Board has generally not granted these variances in other places that may have larger lots, he feels the applicant's practical difficulty is their lot size, whereby being able to put in a garage that suits their needs, their choices are very limited. He is inclined to support the variance, and suggested striking finding #4 from the sample motion if a motion is made to approve.

Mr. Chalmers understands the applicant's ailment and the need to get from the inside of the garage into the house and the need for additional space for the family. He asked if the applicants could accomplish what they wanted to do with a one car garage. He feels what the issue comes down to is the second car garage will now encroach into the setback to the east. He is not inclined to support the applicant.

Mr. Fons indicated he drove through the neighborhood today and saw close to a dozen homes that were remodeled in the same way the applicant is proposing, and some had only 5-6 foot side yard setbacks to other structure. He thinks it would be unfair to the applicant to deny them when the next door neighbor has the exact same configuration.

Mr. McGunn agreed with Mr. Fons and asked if anyone has built an addition and

a two car garage while meeting the required setbacks in this neighborhood.

Ms. Roediger advised staff did not review building permits to see how many additions met the ordinance requirements. Staff did however, research the records to see if there have been any addition permits issued for this area in the last seven years, and there was not.

Mr. McGunn said it appears to him, in spite of the zoning requirement, that the character of the neighborhood would support getting closer than 10 feet to the lot line, so he is inclined to approve the request.

Mr. Colling pointed out that the Board denied a similar couple a two foot variance so they could put a full size couch in an addition to their family room off the back of the house. There was also another situation where a corner addition extended one foot over the setback and that request was denied. The Board has to think of not only the people in the subject neighborhood, but throughout the City that have been denied. Precedence has been set for the last 20 years that there must be a practical difficulty in order to approve variances. He feels it is unfair to individuals who came to the Board before and were denied, to turn around and grant a variance because of the character of the neighborhood. The City can't have a zoning ordinance that applies to just one neighborhood, and not throughout the entire City.

Mr. McGunn disagreed, thinks each situation is unique, and the character of the neighborhood is not going to be adversely affected by this addition.

Chair Colling understands this argument as he had a similar situation with his home and a 60 foot lot, and had to work with Council to change the ordinance in R-4 zoning for front yard setbacks in order to get a front porch put on his home. This ordinance change prompted an increase in permits for renovations in the Brooklands Sub. He still feels in fairness to individuals who have been denied for lesser variances, the Board can't approve this. If there was a practical difficulty in this case, he would be willing to grant the variance. But this is a matter that is self-created; it's something the homeowner wants to do. Other designs exist that could be done within the building envelope of the property.

Mr. Hetrick noted the applicants did not have an opportunity to respond to Mr. Chalmers' question about if a one-car garage would accomplish what they wanted, and asked if they could put a one-car garage on the house.

Mr. Taylor responded yes, currently he has a one-car garage and there is room to connect it to his home. Ms. Taylor added anyone could build a one-car garage, but they own two vehicles. They have been waiting 20 years to have a two-car garage, and didn't realize the setback requirements when they purchased the home. With everybody else having a two-car garage, 20 years is a long time to wait to have the money to build it. Mr. Taylor indicated he would like a two-car garage, but a one-car garage or a two-car detached garage is an option, but it's not what they want.

Mr. Hetrick drove through the neighborhood and commented there were far more than four homes that have garages closer than 10 feet to the property line.

Mr. Chalmers added that it is up to the applicant to show the distance of those setbacks and the years they were built.

Mr. Hetrick pointed out staff gave four examples.

Chairperson Colling commented the four examples are from the 70's and 80's, which is almost 40 years ago. He is more concerned about how many of these variances have been granted by the in the past 20 years. He stressed there can't be a situation where you have one set of rules in one area of the City and another set somewhere else. Rules must be consistent across the board, all citizens must be treated equally, and if the Board holds the line on variances anywhere within the City for this particular reason, it has to be done tonight as well, irrespective of what happened 40 years ago.

Mr. Hetrick disagreed because precedent was set for this neighborhood in terms of variances.

The Chair indicated precedent has been set in the City for the past 20 years as well. If the variance was granted, it gives anyone who has been ever denied in the City, cause to come back to the Board and reopen their case. He is not willing to do that.

MOTION by Hetrick in the matter of File No. 17-003, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a variance of 4.7 feet, Parcel Identification Number 15-10-205-037, zoned R-4 (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 attached accessory buildings 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 a use or development of land 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. Alternatives do not exist that would allow the intended and/or reasonable use of the property that would allow the requirements of the Ordinance to be met.
5. This variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the neighborhood.
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.*

There was no second to the motion.

MOTION DIED FOR LACK OF A SECOND.

MOTION by Chalmers, seconded by Fons, in the matter of File No. 17-003, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a variance of 4.7 feet, Parcel Identification Number 15-10-205-037, zoned R-4 (One Family Residential), 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 governing the minimum setback for attached accessory buildings will not prevent the owner from using the property for a permitted purpose in a reasonable manner, and will not be unnecessarily burdensome.*
2. *Granting the variance will not do substantial justice to nearby property owners as it will allow an attached accessory structure closer to the side property line than other lots. Thus, the variance would confer a special benefit on the applicant that is not enjoyed by neighboring property owners.*
3. *There are no unique circumstances of the property that necessitate granting the variance.*
4. *The circumstances are self-created by the applicant in the form of their desire to construct an addition and attached garage closer to the lot line than permitted on the property.*
5. *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.*
6. *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 and those wishing to build similar structures within the City.*
7. *The granting of this variance would be materially detrimental to the public welfare or existing or future neighboring uses.*
8. *Approval of the requested variance may impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, and/or impair established property values in the surrounding area.*

A motion was made by Chalmers, seconded by Fons, that this matter be Denied. The motion carried by the following vote:

Aye 4 - Chalmers, Colling, Fons and McGunn

Nay 1 - Hetrick

Absent 2 - Brnabic and Koluch

[2017-0099](#)

SIGN BOARD OF APPEALS

PUBLIC HEARING - FILE NO. 93-382.4

Location: 1015 E. Auburn Rd., located on the northeast corner of Auburn and John R Roads, Parcel Identification Number 15-25-351-041, and zoned B-5, Automotive Service Business, with an FB-2 Flex Business Overlay.

Request: A variance to allow a panel change to an existing nonconforming sign pursuant to Section 134-107(5)b., which indicates nonconforming signs or sign structures shall be removed when the name of the premises or business the nonconforming sign pertains to changes. The submitted sign permit application is requesting a name/panel change for a new business on an existing nonconforming sign from Marathon to Mobil.

Applicant: David Hardy
Hardy & Sons Sign Service
22340 Harper
St. Clair Shores, MI 48080

(Reference: Staff Report dated March 3, 2017, prepared by Sara Roediger, Interim Director of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

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

Mr. David Hardy, Hardy & Son Sign Service, 22340 Harper, St. Clair Shores, MI, the applicant and Mr. Ziad Koza, owner of East Auburn Investment, LLC, and Auburn Convenience, Inc., the property owner, came forward, introduced themselves and gave a summary of their request. Mr. Hardy indicated people buy gas because of the price. The sign has to show the brand and the price of the gas. Ground signs are fine for big-name companies, like restaurants and CVS. People have to be able to read the gas price as a survey showed that 75% of people purchase gas based on the price. The sign at the Walton and Adams station is a ground sign, and Mr. Hardy indicated he can't see the sign from Adams Road because it is so low, and he had a tough time seeing the sign traveling east on Walton Blvd unless he was in the right hand lane. A customer has to be able to see the sign in time to make the turn into the business. The subject sign has been on site for 35 years, the columns have been bricked in, and it's a very nice sign. The sign is 80 square feet, and only 50 square feet is allowed. The sign would have to be a lot smaller and only seven feet tall to conform. The sign would have to be turned in order to be seen mainly from one road. The sign can't be turned because one post would be in the driveway. Lowering the sign would be very difficult on this site. Mr. Hardy referred to the

ordinance which states you can't change a panel when the name or kind of business changes. This business is a gas station, always has been a gas station and will continue to be a gas station. He just wants to slide the current brand name out and replace it with the new brand. The owner's new supplier's name must be on the sign. If the sign was lowered, advertising for auto repair, tune-ups and wine sales on the reader board would have to be eliminated in order to accommodate the three prices for gas. The property owner will also have to eliminate all the landscaping in front of the sign as it is three foot tall and will block most of the sign. The brick sign columns themselves will have to come down. The sign can't be extended to the left any further because it would be closer than 10 feet to the right-of-way. The sign currently is somewhat hard to see from John R. When the sign was originally installed, it had to be at the current angle because of the driveway and the 25 foot corner clearance requirement. The owner wants as much traffic as he can get and doesn't want to cut down the trees or the landscaping. When the current owner bought the building he did not know the sign would have to come down. The existing sign is very readable and can be seen from a far distance. The owner wants to keep the business going, and visibility is the key.

Mr. Koza added his family is in the gas business and they have sites all over the state. With the heavy traffic in the area, safety is another issue with lowering the sign. Having a monument sign with the loss of visibility, people could be stopping to see the price and disrupting the flow of traffic. The property owner agreed with everything Mr. Hardy explained.

The Chair called for staff to summarize the staff report.

Ms. Roediger said it's her understanding that back in the 1990's, pole signs were quite an issue. At the time, there was an ordinance drafted that required all of these nonconforming pole signs to be reduced in height. When the ordinance was first drafted it gave existing sites approximately one year to come into compliance. This ordinance was adopted in the late 90's. After a year went by, on the eve before the one year timeframe expired, City Hall was stormed by business owners that complained they were only given a year to come into compliance, which was not ample time. In response, Council worked with staff and the City Attorney, and they drafted the nonconforming sign section of the ordinance, which basically dictates that over time as businesses evolve, redevelop and change hands, there will be certain circumstances when certain trigger points happen, where it's expected the sign will come into compliance. Twenty years later, we have a change in ownership of a business which resulted in a name change; that is specified as one of the criteria when a nonconforming sign must cease to be nonconforming. From a policy and ordinance standpoint, the Council and staff were very clear as to when they expected signs to come into compliance. In looking at gas stations specifically, she agrees their signs are different from regular store signs; they have information that is more informative and specific than just an identifying sign. Staff looked at other B-5 zoning districts in the community, there is a Mobil station that was just constructed at Walton and Adams that has a monument sign with the price information as well as a Tim Horton's sign that meets ordinance requirements. There are number of gas stations that are all redeveloping in accordance with the ordinance requirements. Staff does not see anything unique about the

subject site that would prevent the sign from being lowered in its same location retaining the existing low landscaping that is consistent with many gas station signs throughout the City.

Mr. Hardy commented the gas station owner at Walton and Adams knew the ordinance with they built the structure. Mr. Koza did not know the sign ordinance when he purchased the station.

Ms. Roediger suggested the property owner should have done due diligence of what is and will be required as part of the expectation of the owners. Mr. Jack Sage of the Building Department has implemented the nonconforming signs ordinance. It's always difficult when no one wants to change what exists, but the compromise from City Council and policy standpoint was to allow the change to happen gradually over time without a specific deadline.

Chairperson Colling indicated the only variances granted for gas station signs to retain a pole sign and not convert to a monument, were those when there was no possibility of another location on the property, either due to the size of the lot or the access points to enter and exit. An example is the Clark station on Rochester Road. He realizes the applicant does not want to change the landscaping, but it appears there is sufficient property to build a monument sign and place it so that it would not be in the right-of-way, would not restrict visibility, and can conform to City codes.

Mr. Sage noted the original sign permit was approved in 1993. The sign is outside the required 25 foot corner clearance, and meets the 10 foot setback. Dropping the sign straight down in its current location would meet the ordinance.

The Chair asked if there is room to rotate the sign so it's visible from north and southbound John R as well as east and westbound Auburn, putting it at a 45 degree angle.

Mr. Sage would have to look at the site and feels that angle might force a portion of the sign into the driveway. He added the sign is nonconforming not only from the aspect of changing ownership on a pole sign which is against the ordinance, but the height is 20 feet and the sign exceeds the allowable size by 18 square feet.

Mr. Hardy commented the sign can't be lowered, it must be removed, as the sign itself is 11 feet tall.

Mr. Colling stated the height of the sign and the actual square footage of the sign exceed the ordinances, and his best estimate right now is there definitely is a way to fit the sign into a monument sign. The station on Tienken and Rochester Road went through this, and was able to build a monument sign.

Mr. Sage explained that Marathon station has a v-shaped monument sign, but it is one structure. The gas station on Livernois and Walton, as well as the station on Livernois and Auburn, have lowered their signs.

Mr. Hetrick questioned if the gas station on Walton and Adams previously had a

nonconforming pole sign.

Mr. Sage said their previous sign was 12 feet tall.

Chairperson Colling indicated the precedent has pretty loose, and the Board has tried to favor the applicant in most cases, as long as the business did not change hands, and didn't substantially change the sign. However, in this case, there are three triggers that warrant this sign to conform to code. Because of the number of issues with the sign, he is not inclined to allow a panel change.

Mr. Hardy explained they don't want to change the structure of the sign, the square footage or anything else. If the station remains a Marathon, can the sign stay in place?

Mr. Colling pointed out the issue is the applicant is already at the trigger with the height and size of the sign. One of the provisions of the ordinance is change in ownership. The issue tonight is a change in ownership, and the Board can't ignore everything that is going on to allow the sign to remain.

Mr. Hetrick commented he drove by the Adams and Walton location and found the sign to be very readable. The monument is set in a place where it's easy to read from Adams and from Walton. The applicant may have to reduce the landscape so that the monument fits and is easy to read. He commented the current owners of the station have been doing a terrific business. He buys his gas there and will continue to do so, however, his job is not to approve or deny people's business models. It's been clear that the opportunity for the applicant to maintain the sign is negligible, and he is in favor of a motion to deny.

Mr. Hardy asked Mr. Hetrick if the sign was smaller and lower to the ground with smaller prices, would people still be able to read it as well?

Mr. Hetrick replied absolutely - he saw the sign on Adams and Walton and it is very easy to read the prices.

The Chair mentioned several stations that have monument signs with pricing that are read everyday, and those businesses are not suffering. The applicant does not have any more of a disadvantage than any other station within the City by complying with the ordinance.

Mr. Koza agreed with everything Chairman Colling is saying, and monument signs are the more modern look at gas stations. But he also thinks the way the subject corner is situated and where the current sign is located, that this is the only corner the sign can be located on. He believes that installing a monument sign at the same angle will make it more difficult for commuters and difficult to read.

Chairman Colling commented there are some options that haven't been discussed. In looking at the aerial of where the sign is currently located, it is possible to bring the curb around the island. He doesn't think the sign, placed at a 45 degree angle pointing towards the intersection so it can be seen from both roads, with the curb extending around the sign would be that much of an

encumbrance. There would still be plenty of access into the drive and around the property. Mr. Colling is more inclined to grant a variance allowing a monument sign to slightly encroach into the right-of-way than he would allowing the applicant to keep the nonconforming pole sign. Staff can work with the applicant to try and get a monument on the allowed space that is visible. The applicant may not even have to do anything, the sign may fit once staff takes the measurements. We haven't even tried to see if a monument sign would fit, so we're assuming it's not going to work.

Mr. Hetrick agreed with Mr. Colling in that City staff would be available to assist in how to orient a monument sign in a way that it's readable. He is in favor of denying the variance.

Mr. Chalmers asked if the applicant already signed his supply agreement with Mobil, to which Mr. Koza replied yes.

Mr. Koza commented that in most cities, if you are just changing a panel on a sign and not doing anything structurally, there has never been an issue with meeting the code.

Mr. Chalmers understands the applicant has to do something, and encouraged the applicant to start looking towards making the best monument sign he can. Unfortunately, the Board can't support the variance based upon the way the ordinance is written now.

Mr. Fons agrees with the ordinance. He commented the existing sign is on the pavement and not the grass. Mr. Fons is more inclined to grant a variance to allow the sign to move into the grassy area rather than to keep it as it is.

Mr. Hardy feels the a sign is hard to read at a 45 degree angle. Mr. Koza thinks that whole issue is the angle of the sign, and not about moving it closer to the road.

Mr. Colling reiterated that he thinks an angle could be found that will work if the applicant works with City staff, and if it requires a minor variance, the Board is willing to work with property owner. He noted that most of the people buying gas at the subject site live in the neighborhood and will return based on the good prices. He does not feel the applicant will experience a loss of revenue based upon the sign being conforming. Mr. Colling feels there is a way to install a conforming sign that will be seen from both roads without any real difficulty.

Mr. McGunn had nothing to add and is inclined to deny the variance in keeping with the ordinance as written.

MOTION by Hetrick, seconded by Chalmers, in the matter of File No. 93-382.4, that the request for a variance from Section 134-107(5)(b) of the Rochester Hills Code of Ordinances to allow a panel change on an existing nonconforming sign, Parcel Identification Number 15-25-351-041, zoned B-5 (Automotive Service Business), with an FB-2 Flex Business Overlay, be **DENIED** because competent, material, and substantial evidence does not exist in the official record of the appeal that supports all of the following affirmative findings:

1. Special Conditions. Special conditions or circumstances do not exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the B-5 district. There are examples of this businesses signs within Rochester Hills that meet ordinance requirements.

2. Deprivation of Rights. A literal interpretation or application of the provisions of Chapter 134 would not deprive the applicant of property rights commonly enjoyed by other properties in the B-5 district under the terms of Chapter 134.

3. Substantial Justice. Allowing the variance will not result in substantial justice being done, considering the public benefits intended to be secured by Chapter 134, the individual difficulties that will be suffered by a failure of the SBA to grant a variance, and the rights of others whose property would be affected by the allowance of the variance, and will be contrary to the public purpose and general intent and purpose of this chapter.

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

Aye 5 - Chalmers, Colling, Fons, Hetrick and McGunn

Absent 2 - Brnabic and Koluch

The Commission encouraged the applicant to meet with staff to try to design something that is beneficial. The applicants thanked the Board for their time.

ANY OTHER BUSINESS

No other business was brought forward for discussion.

NEXT MEETING DATE

The next Regular Meeting is scheduled for April 12, 2017.

ADJOURNMENT

Chairperson Colling adjourned the meeting at 8:10 p.m.

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

Sandi DiSipio, Recording Secretary