



Rochester Hills

Minutes

Zoning Board of Appeals

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Rochester Hills, MI
48309
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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, May 10, 2017

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 7 - Deborah Brnabic, Bill Chalmers, Ernest Colling, Dane Fons, Dale Hetrick, Kenneth Koluch and Michael McGunn

*Also Present: Mark Artinian, Building
Mark McLocklin, Ordinance Enforcement
Sara Roediger, Director, Planning and Economic Development
Jack Sage, Ordinance Enforcement
Bob White, Supervisor, Building Services
Sandi DiSipio, Recording Secretary*

APPROVAL OF MINUTES

[2017-0226](#) April 12, 2017 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 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

COMMUNICATIONS

Planning & Zoning News - March & April 2017 editions

PUBLIC COMMENT for Items Not on the Agenda

No public comment was heard on non-agenda items.

NEW BUSINESS

[2017-0220](#) **PUBLIC HEARING - FILE NO. 17-010**

Location: 3785 Donley Ave., located on the east side of Donley, north of South Blvd., and west of Crooks Rd., Parcel Identification Number 15-32-478-009, and

zoned R-4 (One Family Residential).

Request: A request for a variance from Section 138-10.308.A.2.a. (Parking and Storage of Commercial and Recreational Vehicles) of the Code of Ordinances, which prohibits the parking or storage of commercial vehicles in the R-4, One Family Residential Zoning District. The applicant has been served civil infractions for the parking/storing of a stake truck in a residential zoning district.

Applicant: David Turner
3785 Donley Ave.
Rochester Hills, MI 48309

(Reference: Staff Report dated May 1, 2017, prepared by Sara Roediger, 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 Turner, 3785 Donley, Rochester Hills, the homeowner and applicant, came forward, introduced himself and gave a summary of his request. He has owned and operated a small property maintenance company for 30 years, 16 of those years at the current location. His son and himself are the only employees. The nature of his business requires that he is on call 24 hours a day as he maintains numerous properties - a medical office building and a private school being two of those. Having immediate access to his vehicles is imperative. Storing them off-site would directly impact his ability to perform his job. Most local storage facilities do not allow outside storage or parking, and are not accessible 24 hours a day. He is not in a position to purchase or rent his own shop. In the 16 years he has lived at this address, he has mowed the commons area across from his home, and plowed the streets in his subdivision. He has yet to hear from a neighbor that complains that the road was too clear for them to get out and go to work in the morning. The truck that is in violation is his personal daily driver. It is a one-ton pick-up truck with the box removed and a stake truck platform installed for years of rust and damage free service. He has no other vehicle that it is his daily driver. His wife has a car and his daughter and son share a vehicle. The average cost of a side of a regular pick-up truck is about \$1,000 to replace, and it's constantly in need due to the salt he uses with the business. Dimensionally, they are no taller or wider than a standard pick-up truck. It reflects a clean appearance of his business to keep a vehicle that is not dented and/or rusty. They are kept behind the front plane of the home, where they are only visible directly down the driveway and to a couple of houses to the north of the subject property. The block has 11 homes, and dead-ends to the north at Deerfield Elementary School. Ten of these homes, he has performed or currently services, as well as numerous others in the subdivision. It would cause great financial hardship on his family and business to not have immediate access to the vehicles that he relies upon to perform his job in a timely manner.

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

Ms. Roediger pointed out there are a number of factors that the ZBA is bound to

find when granting variances. The first is compliance with the regulations of the zoning ordinance unreasonably prevents the owner from using their property for the permitted purpose. In this case, it is a residentially zoned property, which is intended primarily for residential home purposes. The granting of a variance will not do substantial justice to the applicant as well as other property owners. Allowing parking or storage of a commercial vehicle in a residential district is not permitted in any residential district anywhere in the City, so other properties are not permitted this right. The plight of the applicant is not due to unique circumstances of the property, so it's up to the applicant to prove there are unique circumstances that would differentiate this property from others elsewhere in the City. The Board must find that the problem is not self created and that the spirit of the ordinance will be observed and public safety, health and welfare preserved. All residential districts have a statement that the district is intended to promote compatible arrangement of land uses for the homes with the intent to keep the neighborhoods relatively quiet and free of unrelated traffic noises. It is because of that reason that commercial vehicles are not permitted in residential districts.

Chairperson Colling opened the public hearing at 7:07 p.m. and read the correspondence received into the record.

*Email in opposition to granting the variance received May 1, 2017 from **Jolie Booser, 2048 Grace Ave., Rochester Hills, MI 48309.***

*Email in opposition to granting the variance received May 9, 2017 from **Brian Urbach, 3960 Donley Ave., Rochester Hills, MI 48309.***

*Phone call in opposition to granting the variance received May 4, 2017 from **Mark Walega, 3795 Donley Ave., Rochester Hills, MI 48309.***

*Letter in opposition to granting the variance received May 1, 2017 from **Donna Walega, 3795 Donley Ave., Rochester Hills, MI 48309.***

***Mark Walega, address previously given,** came forward and asked that the Board enforce the current code of residential zoning for the subdivision. The ramifications of doing otherwise would be detrimental. He lives next door to the applicant and has not seen a shortage of vehicles parked at said address. Heavy equipment ruins roads over time but the City implemented a strategy to combat this - the single hauler trash pick-up which saves wear and tear on the roads. Please do not allow stake trucks in residential zones to wear the roads out. Commercial equipment ruins the residential feeling, safety and security of a residential neighborhood. How? - They carry combustible fuel and emit more pollutants. There are no sidewalks in the sub. The children should also feel safe in their residential environment. Property values would suffer as a result. These types of vehicles would not entice prospective buyers or be conducive to increased property values. The new homes in the adjacent subdivisions are ranging from \$400,000 to several million dollars. Commercial equipment and trucks would reduce everyone's home value and inhibit appreciation as these items are unsightly. The noise and sounds from commercial vehicles does not promote the residential attributes of birds and frogs. People want to ride bikes and walk the residential area, but this type of variance would be prohibitive to*

this type of recreation. When he moved there 35 years ago, he did so because he wanted residential. It wasn't to hear commercial mowers being tuned up or mower blades being grinded on a regular basis. His motive for moving to this neighborhood wasn't to have a lawn spray truck full of chemicals in the driveway as he knew these things are not permissible here. He does not want these things imposed on him, nor would he force it on his neighbors. He knew if he wanted to run a business out of his driveway he would have to live elsewhere where it's permitted, or rent a storage yard for equipment. He wants to be a resident of a residential neighborhood, not a commercial neighborhood. He asked the Board to please enforce the residential code for the benefit of all residents.

Mr. Thomas Delpup, 3759 Donley Ave., Rochester Hills, MI 48309, came forward and indicated his property is directly adjacent to the applicant's property. The applicant's driveway is adjacent to his property line and his dining room looks out on this driveway. He does not have a problem with the request for a variance. The vehicles are the applicant's daily driving vehicles. The applicant drives one of the trucks, his son drives another truck, and his wife and daughter have cars. They look like standard pick-up trucks with the sides removed and a flatbed installed. They are no larger than a standard truck. As far as traffic is concerned, Mr. Turner is not asking for the ability to drive additional vehicles down the street - it's only two vehicles. Every night the subject vehicles are in the applicant's driveway behind the front line of the house, and can't really be seen from the street unless standing right in the driveway. The applicant maintains his property and the trucks in a neat and proper manner. He is an asset to the neighborhood and is just trying to make a living. If the Board's inclination is to decline the variance, he suggests they consider granting the variance with conditions, as these vehicles are standard size trucks. Perhaps limiting the number of trucks to two, or limiting the load capacity to no more than what the applicant currently has. If there is a concern about the equipment being stake-trucks, there could be a condition that the side boards be no higher than the height of a standard pick-up truck. He does not have a problem with the request, and asked that the variance be granted.

Mr. Michael Mulka, 3762 Nearing Rd., Rochester Hills, MI 48309, came forward and stated his house is two houses north of the applicant's. He can look right at the applicant's property from his deck. He has no problem with the trucks he has on the property; they are not unsightly. Donley is a dead-end street and is also an emergency access to Deerfield Elementary School. The applicant always plows the street during the winter. In addition, he always plows Mr. Mulka's driveway as he doesn't get home from work until late. He is a very good neighbor and an asset to the community. He asked that the Board grant the variance.

Mr. Brad Baerlocher, 3744 Donley Ave., Rochester Hills, MI 48309, came forward and explained he lives across from the applicant. He agreed with everything that Mr. Delpup previously stated. The applicant is an excellent neighbor and does so much for the street, i.e., plowing. The commons area is also maintained by the applicant. He requested that the ZBA approve the variance.

There being no others wishing to speak, the public hearing was closed at 7:24 p.m., and the floor was opened for Board discussion.

Chair Colling realizes that the trucks are based on a one-ton pick-up, but so are cube vans and tow trucks and a lot of other vehicles that are prohibited by the ordinance. It's not so much the base vehicle as it is the equipment, the look and the purpose of the vehicle. Staff has tried to allow similar vehicles under the ordinance to what people drive as their personal vehicles. He know this because he was on the committee that crafted the ordinance. That is why vans for people who do painting or carpentry or work for security companies are allowed because people drive mini-vans or full-size vans that are similar in size. He personally drives a large pick-up truck without commercial lettering or commercial equipment in the back. When you take the bed off a pick-up truck and install a workbox on it, or a flat-bed, it becomes a different animal. The intent of the ordinance was to limit in scope and number, the types of vehicles that were allowed into a subdivision. The difference is the way the vehicle is outfitted with options that classify it as a commercial vehicle.

Mr. Koluch commented staff went over the criteria necessary to meet in order to grant a variance, and one has to do with the nature of the property itself - why is this situation not allowing the applicant to use his property for its permitted purpose. He is having a difficult time coming up with a hypothetical situation where the board could say that this ordinance prevents the applicant from using his property for the purpose its designed to be used for. This is residential property, designed to be a residence. When commercial machinery or vehicles are added, it changes it. The ordinance was written to have a separation between commercial and residential property. Mr. Koluch is having a difficult time trying to figure out a way this question can be answered. Residential property is not supposed to be used for commercial vehicle storage.

Mr. Turner said other residences very close to his have similar vehicles parked right in the front yard. His vehicles are behind the front plane of the house, and are unobtrusive. There are numerous other people that don't have signage on their vehicles, which is illegal based on federal law. Federal law requires the signage on his truck. He leaves, just like any other business person, in the morning and come home late at night. Because he takes care of a medical office building that is open almost 24 hours a day, and a private school, immediate use of the applicant's vehicle is his job requirement. He needs access to his vehicle. Mr. Turner understands the nature of what the City's requirements are as far as the look of a vehicle. His vehicle is to look good long term, rather than a beat-up pick-up truck. These truck just fall apart when in the state of factory ready. His vehicle's body looks good today, and will look good 15 years from now. This vehicle is no taller, longer, or wider than any other pick-up truck. It is a regular cab pick-up, not an extended cab. If these vehicles are stored off-site, the applicant has no other vehicles accessible to get to and from the storage facility. He is asking for a 2 year variance in order to get another vehicle, and arrange for his equipment vehicles to be off-site in order to get the neighborhood back to the way it was. When he moved into the subdivision, 11 out of the 22 homes on his street were contractors, many with panel vans. It was status quo for the neighborhood - a dirt road on a dead-end street. He has maintained this street to the best of his ability for the benefit of

the neighbors.

Chairperson Colling disagreed with the applicant's statement about the truck. The flatbed does not have fender wells on it, meaning the flatbed is sitting above the wheels and the equipment in the truck is sitting up higher on the back end. This is not the same as a pick-up. He asked if there was any reason that the applicant couldn't enforce the floor of a standard pick-up with sheet metal, and fit the salt spreader between the wheel wells.

Mr. Turner said it's not the inside of the pick-up truck that gets damaged, it's the outside fenders.

Mr. Colling understands, but the point is that the cab and the rest of the vehicle body have the same potential to get damaged as the fenders. In his mind, this is a self-created circumstance in the applicant's desire to operate a business out his home, which is Mr. Turner's right. But the applicant must also comply with the ordinances in the City. The point is the applicant is running a modified vehicle that is outside the commercial vehicle ordinance.

Mr. Hetrick commented that an individual who has a van used for commercial purposes, is also out of compliance. While the applicant's business has been very successful and the neighbors appreciate what he does, it's still a business that operates with a commercial vehicle in a residential property that is out of compliance with the ordinance. If the Board approves this request, that means that anyone else who has a commercial vehicle on a residential property now has precedence to request the same variance. Mr. Hetrick does not support granting the variance. He feels there are opportunities for the applicant to find a place to keep the vehicles in a way that he can still maintain his service level to his customers.

Chairperson Colling asked staff if the ordinance allows pick-up trucks and regular sized unmodified vans even with lettering. These comply with the ordinance because they are standard vehicles.

Mr. Sage concurred these types of vehicles are allowed by ordinance.

Mr. Colling then asked if the applicant had a standard one-ton pick-up truck with an eight-foot bed, that the equipment sat in the bed, would this be allowed by ordinance.

Mr. Sage stated that would be allowed by ordinance, but the fact is the subject vehicle is registered as a stake truck.

Mr. Colling explained there are ways to comply with the ordinance, and keep a vehicle at the subject property to operate the business. He understands Mr. Turner's preference for a stake truck, but there are ways to comply with the ordinance.

Ms. Brnabic agrees with Mr. Colling and that granting this variance would set precedent. She mentioned that a comment was made about other commercial vehicles parked in this area, and asked staff if they have been served a civil

infraction.

Mr. Sage has asked the applicant to identify the locations that he was referring to. The location is on the opposite side of Crooks Road, and is not Mr. Sage's area to enforce. Staff asked for a photograph of the vehicle, but it has not been received. If the other vehicle is in violation of the ordinance, the ordinance department will be happy to address it.

Mr. Chalmers asked the applicant if he agrees his vehicle is a commercial vehicle parked in the driveway in a residential area, to which Mr. Turner responded yes it is.

Mr. Fons commented there is a \$150 violation from August 19, 2014 included in the packet which was paid, so the applicant knew then there was a problem with the commercial vehicle.

Mr. Turner said he has no knowledge of this violation.

Mr. Sage indicated the applicant was cited in 2013 and 2014, and paid the fines to the City.

Mr. Turner stated the only thing he was ever cited for was a tree chipper he owned, which was three years after he moved there.

Mr. Fons explained the violation says "stake truck and wood chipper", so the stake truck was mentioned in the violation.

The applicant said he does not have any recollection of the violation.

Staff confirmed the fines were paid on both violations.

Mr. Colling pointed out that whether or not the applicant remembers the violations, the stake truck was cited at least two years ago. He added the Board does not grant variances for two years - variances are permanent and run with the property. He is reluctant in this case to grant a variance because it will set a precedent for anyone else that has any kind of business to ask for the same thing. There has to be some control over commercial vehicles.

Mr. McGunn commented he has nothing to add.

Mr. Koluch asked staff if there is a standard period of time when the applicant would have to comply with the ordinance if the variance is denied.

Mr. Sage explained the applicant would have 30-60 days to find another location for the vehicle. If this doesn't happen, staff would have to issue a district court ticket, where the applicant would be asked if his administrative remedies were exhausted. It would then be in the hands of the court.

Chair Colling asked if the applicant has a trailer or something to haul the mowers and other equipment and where is this vehicle kept.

Mr. Turner stated he has a trailer and it is kept behind the truck. It's a 30-inch tall trailer not visible from the street.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 17-010, that the request for a variance from Section 138-10.308.A.2.a. (Parking and Storage of Commercial and Recreational Vehicles) of the Rochester Hills Code of Ordinances to allow the parking/storage of a commercial vehicle in a residentially zoned district, Parcel Identification Number 15-32-478-009, 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 parking/storing of a commercial vehicle 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 the parking/storing of a commercial vehicle in a residentially zoned district. 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 his desire to park/store a commercial vehicle on the property.
5. The granting of the variance would be materially detrimental to the public welfare or existing or future neighboring uses by allowing the parking of commercial vehicles in a residentially zoned district.

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

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

[2017-0224](#)

PUBLIC HEARING - FILE NO. 17-011

Location: 320 Lehigh Rd., located on the southwest corner of Lehigh Rd. and Norton Lawn, south of W. Hamlin Rd., and west of S. Rochester Rd., Parcel Identification Number 15-27-401-011, and zoned R-3 (One Family Residential).

Request: Prior to submitting plans for a proposed addition that will be denied by the Building Department, the applicant is requesting an interpretation of an Established Building Line, as defined in Section 138-5.101.B (Footnotes to the Schedule of Regulations) of the Code of Ordinances.

Applicant: Gordon Hotchkiss
320 Lehigh Rd.
Rochester Hills, MI 48307

(Reference: Staff Report dated May 3, 2017, prepared by Sara Roediger, 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. Gordon Hotchkiss, 320 Lehigh Rd., Rochester Hills, MI, came forward, introduced himself and gave a summary of the request. He was accompanied by his wife. He is hoping to get three questions answered by the Board tonight. He asked if the members could provide an interpretation for the setback requirements for 320 Lehigh. He asked the members to provide a basis for that setback requirement, if it's less than the 30 feet which is the minimum setback requirement. He asked if the Board could identify any exceptions or variances that could be applied to 320 Lehigh if the setback requirement is over the 30 foot minimum.

Chairperson Colling explained a corner lot is considered to have two front yards, therefore the applicant has two front yard setbacks, which is why that lot is treated differently than other lots.

Ms. Hotchkiss said she understands that, but not all the houses are the same required distance.

Mr. Hotchkiss said he is proposing an addition to the east side of the house. The front of the house faces south. He contacted the Building Department and asked for a preliminary assessment of an established line for the proposed addition. The east side is along Norton, and three other houses adjacent to his house have setbacks of approximately 36 feet, 26 feet and 80 feet. When they calculated the established building line, he feels the number came out skewed just because of the setback of the residence at 2488 Norton, which is at 80 feet, and more than double the maximum setback. He was denied in a preliminary fashion for the proposed addition to the east, when one of the adjacent properties is 26 feet from the property line.

Chairperson Colling stated if the neighbor is at 26 feet, it's probably a nonconforming structure built before the ordinance was put into place, and is therefore grandfathered. If the applicant is extending beyond the baseline established average setback for a front yard, then the situation is out of compliance. He asked how far the addition would be from Norton Road.

Mr. Hotchkiss noted the current distance between the east side of the house and the property line is 41 feet. They want to expand the family room bringing the distance to the property line approximately 33 feet. He pointed he would be above the minimum setback and within the same measurements as the neighboring properties.

Chair Colling asked staff what the average established baseline was for this address.

Mr. White indicated he doesn't have the measurements in front of him as far as

what the other houses were because there is no plot plan or file on this address. He does not know if the house at 2464 Norton is or is not in compliance with the front yard because it is a newer house, but he knows it is not at 26 feet.

Mr. Hotchkiss clarified the house at 2464 Norton is at 36 feet, the house at 2376 Norton is at 26 feet, and his house is 41 feet.

Mr. White indicated the house at 2376 Norton probably was not counted when computing the established building line.

Mr. Hotchkiss disagreed, and said he thought it counted in the equation.

Mr. Colling asked if the two residences to the south of the 320 Lehigh were included in the building line.

Mr. White indicated the two homes to the south were not considered as they are on a different block.

Mr. Hotchkiss pointed out the driveway for 2376 Norton is on Norton, it's not part of the subdivision to the north. All driveways at 2376, 2464 and 2488 Norton face Norton. He questioned the established building line when two houses are less than the minimum setback requirements and the third house is twice over the maximum setback requirement - how can he be penalized for three houses that don't comply with the current ordinance?

When asked which street his house is addressed on, Mr. Hotchkiss indicated he is addressed on Lehigh.

Chairperson Colling indicated this situation is hypothetical in that the applicant hasn't yet applied for a permit. Staff has not ruled on the established building line for Mr. Hotchkiss's situation. The Chair explained the applicant is asking about a hypothetical average of setback based upon the homes in the neighborhood, that has not yet been determined. The Board can't tell the applicant anything about his case until that has been determined, and the building line can't be determined until the applicant makes a formal request for a building permit.

Ms. Roediger remarked there was some discussion with this request and the next case coming up, on proceeding with a variance versus an interpretation. This applicant came to the Building Department to discuss potentials before going through the expense of hiring professionals to design a project that may not meet ordinance requirements. The request before the Board is for an interpretation of the ordinance, it's not directly related to 320 Lehigh, it's related to how staff interprets, applies and enforces this regulation city wide and how they calculate this formula. As indicated in the staff report and in the legal opinion from counsel, the formula is somewhat complicated and has led to confusion both internally and externally to applicants in the past.

Chairperson asked what is meant by the "minus 10 feet"? If the allowable setback in R-3 is 30 feet, and the average setback on this block was 46 feet - does it mean the setback can be as low as 36 feet or does it mean the setback

would have to be 56 feet?

Mr. White indicated there are several issues that staff is struggling with. The language of the ordinance talks about taking the front yard setback of houses within 200 feet of the lot and subtracting 10 feet and then averaging.

Mr. Colling stated the ordinance says the established building line is within 200 feet of each side of the lot (so 2520 and 2558 Norton would be included in the calculation).

Ms. Roediger pointed out the ordinance specifically states 200 feet of the lot on the same side of the street should be used to calculate the established building line. In discussions with the Building Department Director, the calculations were based on homes only within the same block, and not across a street.

Mr. Colling indicates it doesn't state that in the ordinance. And in this case, the street involved is not Lehigh, it's Norton Lawn, based upon the proposed addition. His interpretation is 200 feet in either direction, irrespective of the block.

Mr. White commented that Mr. Staran's legal opinion pointed out the graph in the zoning ordinance and the language of the zoning ordinance don't match - different results can occur when doing the math pursuant to the graph versus the language of the ordinance. There is also the issue if the established building line should be used only in the case of a vacant lot and new construction, or to additions. The City Attorney believes it applies to all lots, not just vacant lots, and also applies to houses building additions.

Ms. Roediger added there is also the question of whether or not the existing house is included in the established building line calculation. She does not think the Building Department includes the subject property when calculating the building line. The City Attorney believes the subject home contributes to the established character of the setbacks and should be included in the calculations.

Chairperson Colling indicated the ordinance notes that if the established building line calculations does not exceed the minimum setback prescribed in the schedule of regulations by more than 10 feet, then you can disregard it and simply use the minimum required setback. Looking at the four houses that are within 200 feet of the subject property, and figuring out the average setback, Mr. Colling asked if it's much beyond the 30 foot setback requirement of the district. He is still trying to get an explanation of how the Building Department is going to calculate the setback and what the definition of what minus 10 feet means. If for example, the average turns out to be 48 feet, minus 10 feet would make the average 38 feet for the setback. The minimum setback is 30 feet. In this case, the applicant would have to use the established building line based on the calculations of the homes within 200 feet of the subject home in either direction, or the minimum setback, whichever is the greater. If it's the established building line, the applicant can go minus 10 feet from that towards the minimum setback, but they can't exceed the 10 feet towards the minimum setback if the distance exceeds the minimum setback.

Mr. White clarified that if the average front yard setback worked out to be less than 10 feet more than the approved setback of 30 feet, then it would go to 30 feet. If it's at 41 feet, the applicant would have to abide by the average front yard setback.

Mr. Colling asked if it includes the minus 10 feet?

Mr. White explained that is with the minus 10 -- per the diagram in the ordinance, in order to get the established building line you have to get the dimensions of the all the houses 200 feet and subtract 10 feet from each setback to get the total and divide by four to get the average.

Chairperson Colling does not follow what Mr. White has explained.

Mr. Koluch suggested the illustration in the ordinance doesn't make sense as it's inconsistent with the ordinance language itself, and in very few situations would it be to the benefit of the property owner, because you're already starting off by taking 10 feet off the top of every house before you even start calculating the building line.

Mr. Hotchkiss verified his house was the first house built within 200 feet and asked that his house be included in the established building line. When he went to the Building Department, they excluded his house in the calculations.

Mr. White said that is because the language of the ordinance says on either side of the subject parcel.

Mr. Koluch thinks the purpose of it is visually looking at the lots to make sure one house doesn't look so far out of line -- it makes sense to include the subject lot.

Mr. Colling stated he had an issue with his house and the ordinance was eventually changed to allow his addition. When they calculated the building line for his home - they took the setback of every house on the street, averaged it, but didn't subtract 10 feet from the setback. The setbacks were averaged and that was the established building line. The minus 10 feet comes after the established building line has been defined. He feels to calculate the building line, you would establish the setback of every home within 200 feet on either side of the property, including the property, average that, subtract 10 feet from that average and see how that compares to the minimum required setback. If it's more than 10 feet beyond the minimum setback, then the applicant would have to use the established building line minus 10 feet.

Mr. Hotchkiss said that's not the example shown in the ordinance.

The Chair agreed the illustration shown does not match the ordinance language. The Board is trying to give the applicant the interpretation he asked for.

Mr. Hetrick agreed that the ordinance is very confusing. The interpretation from City's staff appeared to be appropriate based upon understanding the

ordinance. The issue is less about if it's wrong, and more about amending the ordinance so it's clearer as to how to calculate the established building line. If the Board said it disagreed with the interpretation from staff, he's not sure he would agree as it's clear everyone has different viewpoints of what the ultimate objective is. Personally, Mr. Hetrick will support what the City staff has done in terms of the established building line, however, he would like to direct staff to amend the ordinance so that the clarity of an established baseline is better than what it currently is. It's obvious the applicant is frustrated, the Board is frustrated and the staff is frustrated - we need to have an ordinance that is actionable that everyone can understand.

Mr. Colling explained the issue for him is that the examples in the ordinance don't match the verbiage of the ordinance. Having been through a similar situation as an applicant to the ZBA, what was done in his case was staff averaged the setbacks, then did the minus 10 feet and said that is as close as you can go. Because he was within the minimum required setback that's what was used in his case. If the City is going to use an average setback as a baseline, and the idea behind this is to establish the character of the neighborhood and how far homes are generally set back, it doesn't make sense to subtract 10 feet from everyone's setback and then do the average. It makes sense to calculate the average and then subtract 10 feet from the average and that's the setback. That is how he interprets the ordinance.

Mr. White noted one other possibility has been suggested by the consultant. That is to take the minus 10 foot requirement out of the ordinance altogether, and state that if there are existing homes within 200 feet of a subject lot on the same side of the street that have an average setback that differs from the front yard setback as required within the ordinance by more than 10 feet, then the average front yard setback shall be used as the required setback. In no instance will the front yard setback be reduced to less than 20 feet.

Chairperson Colling explained that the front yard setback for the R-4 district was amended in 1992 based on his property, and includes a plus or minus 10 foot verbiage. He suggested that this ordinance language be applied to the R-3 zoning, and anywhere else staff prefers to do so.

Mr. Hetrick reiterated that it's very clear the ordinance needs to be amended, the sooner the better. The applicant wants to put an addition on their house. The addition would be within the 30 foot setback on Norton, however it wouldn't be in compliance based on the established building line. By cleaning up the ordinance, it gives the applicant a better opportunity to determine whether or not the addition is acceptable.

Mr. Colling added that staff and the Board want to allow people to upgrade their home and make improvements. The Brooklands Sub didn't have a lot of work done to the homes until the ordinance amendment. A lot of the houses have had upper stories added with a colonial type front porch. Most of the homes could not have this front porch without the ordinance amendment. He estimates 60% of the properties went through a building boom after the amendment. We have an opportunity to amend an ordinance to make it easier and move forward.

Mr. Hotchkiss asked how long the evaluation will take; the answer being at least six months. He then asked if there is an avenue for a variance after the evaluation is completed.

Chairperson Colling stated that given the circumstances and the past history of the Board, he feels it's safe to say a variance would not be granted for a setback unless there were extenuating circumstances or unique defining characteristics of the property. It's highly unlikely a variance would be granted for the setback.

Mr. Hotchkiss asked if there's another avenue other than the ZBA and this interpretation that would grant the possibility for his proposed addition until the regulations are changed.

The Chair indicated the applicant can go to circuit court.

Mr. Hotchkiss asked the Board to be reasonable and asked the ordinance review committee to look at what harm he would be imposing on the neighbors when their houses are actually closer to the property line than his proposed addition would be. Things that need to be looked at - the inclusion of his property in the established building, the houses to be included in the calculation, and the 10 foot setback either before or after the average. He would also like to know how the house at 2488 Norton was approved with an 80 foot setback, when the maximum is 60 feet.

Mr. Colling indicated houses can be built anywhere in the building envelope, as long as it meets all required setbacks.

Mr. White clarified the 60 foot setback is not a limit, it is the most the City can require for the setback.

Ms. Roediger commented if the Board wants to give some direction to the applicant, we can give direction to staff to correct the ordinances in the future, but the applicant is bound to today's ordinances. The Board can provide some clarification on the existing ordinance language, such as, whether the existing home should be included in the calculations or when to subtract the 10 feet, that is within the Board's purview.

The Chair summarized that the Board would like to have the baseline established before the 10 feet is subtracted, and that the subject property setback be included in the calculation. The houses used to calculate the established building line are not limited to a block, it's anything within 200 feet on either side of the subject property. He suggested the applicant and staff sit down and make the calculations and measurements based upon the recommendations from the ZBA tonight to see where the addition ends up.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 17-011, that the request for an interpretation of an Established Building Line as defined in Section 138-5.101.B (Footnotes to the Schedule of Regulations) of the Rochester Hills Code of Ordinances **Upholds** the definition as defined, Parcel Identification Number 15-27-401-011, zoned R-3 (One Family Residential).

AND FURTHER, clarifies that if a house exists on the subject property, the existing house shall be included in the calculations. The calculation of the established building line will include all the homes on the same side of the street within 200 feet, regardless of whether or not they are on the same block. The language of the ordinance governs over the illustrations. In calculating the established building line, the specific language of the ordinance will be followed - i.e., the 10 feet is taken off after the average is calculated.

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, Colling, Fons, Hetrick, Koluch and McGunn

***MOTION** by Hetrick, seconded by Koluch, **Moved**, that the illustrations currently involved with calculating the established building line be removed as they do not reflect the verbiage of the ordinance, and that the ordinance be rewritten and simplified so that the average homeowner and staff can understand the calculations.*

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

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

2017-0221

PUBLIC HEARING - FILE NO. 17-012

Location: 281 Orchardale Dr., located on the southeast corner of Orchardale and Stockport Drives, south of Walton Blvd., and west of S. Livernois Rd., Parcel Identification Number 15-16-251-001, and zoned R-1 (One Family Residential).

Requests: Item #1 - A request for a variance of 12.31 feet from Section 138-5.101.B. (Established Building Line) of the Code of Ordinances, which states in the event there is an established building line along a street (as determined by the reviewing official), the front yard and/or side street yard setback requirement shall be the established building line, which is the average front yard setback minus 10 feet of adjacent dwellings within 200 feet on each side of the lot on the same side of the street of the subject parcel, or 60 feet whichever is less. The Building Department identified the established building line parallel to Orchardale Dr. at approximately 58 feet. Submitted plans for a proposed garage addition on the Orchardale Dr. side indicates a front yard setback of 45.69 feet.

Item #2 - A request for a variance of 12.17 feet from Section 138-5.101.B. (Established Building Line) of the Code of Ordinances, which states in the event there is an established building line along a street (as determined by the reviewing official), the front yard and/or side street yard setback requirement shall be the established building line, which is the average front yard setback minus 10 feet of adjacent dwellings within 200 feet on each side of the lot on the same side of the street of the subject parcel, or 60 feet whichever is less. The Building Department identified the established building line parallel to Stockport

Dr. at approximately 49.3 feet. Submitted plans for a proposed porch/family room addition on the Stockport Dr. side indicates a front yard setback of 37.13 feet.

Applicant: Amy Bunch
281 Orchardale Dr.
Rochester Hills, MI 48309

(Reference: Staff Report dated May 1, 2017, prepared by Sara Roediger, 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.

Ms. Amy Bunch, 281 Orchardale Dr., Rochester Hills, MI came forward, introduced herself and gave a summary of the request. She was accompanied by her husband. Ms. Bunch stated she moved into her house in 2005, and has always thought about adding on family space, not going up as there are enough bedrooms. They have talked to four architects during this time, one structural engineer about how to best design additional space, and five builders. The house was built in 1961, it's an old subdivision and the larger lots are very unique. There are a lot of wooded areas. Her property is a corner lot, and the location of the house on the lot makes it unique. Even with the addition, she is still within the setbacks of the R-1 district. Ms. Bunch indicated there is a hardship in that the garage has a pole in the center of it, and the structural engineer indicated because they live in the space above the garage, the supporting poles can not be removed. Therefore the garage can't be converted into living space. They designed the smallest footprint possible by filling in the space in the front of the house and making that the living space, which covers the entrance to their garage. Therefore, she is proposing to add a 24' x 22' two-car garage. She set the garage back about a foot so it wouldn't stick out too far, even though it's still within the setbacks. She is trying to keep the integrity of the subdivision because it's very wooded and the spacing of the houses makes the established building line a little different as far as location goes, and making sure they are not protruding on anybody's view or sight line.

Mr. Koluch asked if the extension is on the Orchardale or the Stockport side.

Ms. Bunch pointed out on the plan the living room and porch extension are on the Stockport side and the garage is on Orchardale.

Mr. Colling asked if the poles in the garage support the house.

Ms. Bunch clarified the poles support the house as the I-joist is not big enough.

Chairperson Colling indicated beams can be put underneath and supports built out to the side with the proper footings.

Ms. Bunch indicated the beam goes through the entire length of the house, and the engineers would have to go up into the floor joists above, which can't be done because they live there. The I-beam can't be made any larger either

because it already intrudes on the already short ceilings in the garage and living space.

Mr. Colling asked what the garage space with the poles will be used for once the new garage is built.

Ms. Bunch replied storage and laundry. One of the poles has to stay, that's why it won't be living space. She also mentioned that the established building line calculation is based on one house, because the homes are so far away from each other. She doesn't know if it's really fair to take one house into consideration to calculate a setback for the subject property. She also provided photos showing her property, where is proposed addition is, and the resulting view from neighboring properties. She spray-painted the ground outlining the additions so the neighbors can visualize it.

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

Ms. Roediger indicated anytime the Board is looking at a variance request, there are a number of criteria that must be considered in terms of making a determination. Compliance with the regulations of the district would unreasonably prevent the owner from using the property as permitted - the applicant has indicated in their application that as part of a corner lot, and because of how the house is sited on the property, the proposed locations are the only realistic areas for additions on the house. The granting of the variance would do substantial justice to other properties in the area - in talking about the established building line, obviously there is some gray area in that. Ms. Roediger is curious to determine, based on the interpretation discussion the Board had tonight, if that would change the variance request as outlined this evening, because the variance request was based on the interpretation of staff before tonight's discussion.

Mr. Colling would prefer that the calculation for the established building line be made following the recommendations tonight.

Ms. Roediger said that could be done, so the request tonight may be a little difference once staff interprets the ordinance as directed tonight. The Board also must find that this situation is a unique circumstance - the applicant has indicated that because of a combination of circumstances, i.e., this is a corner lot and smaller than other properties within the same vicinity, the location of the house on the lot, and that the houses are located over 100 feet from one another. These cumulatively create a unique circumstance for this property. To prove the situation is not self-created is a challenging one to meet, but the applicant has indicated the pole and the structural integrity of the home adds some unique, not-self created situations for the existing situation. The spirit of the ordinance will be observed, public safety and welfare secured and substantial justice done criteria - the applicant states there are other homes in the subdivision that are closer to the road, and that combined with the spacing of the homes and heavily treed nature of the neighborhood, and the fact that the additions will meet district setbacks would meet the spirit and intent of the ordinance.

Chairperson Colling referred to the site plan of the property and asked if the dashed line on the plan indicates the building envelope allowed by the zoning district. Ms. Roediger indicated this was correct. Mr. Colling stated there is a substantial area that could be the building envelope on this lot were it not for the established building line setback. He also pointed that within 200 feet of the subject property, there is only one home on Orchardale, which in his mind, doesn't qualify as an established setback based upon the ordinance. He personally would ignore the Orchardale setback because the homes in question and the size of the lot have almost no bearing in this matter. The lots are of such a size that the average setback on Orchardale is not fair if you're talking one home. In looking at the home to the south of the subject parcel, the proposed addition to 281 Orchardale would not be any closer to the street than the existing structure at 333 Orchardale. And the house at 365 Orchardale is further out than 281 Orchardale would be. He does not feel the Orchardale setback has much bearing in this case.

Mr. Hetrick agreed. He drove by the home today and noticed there are a number of homes that wouldn't be part of the baseline calculation and are much closer to the road than the subject property. The applicant is well within the building envelope of the district. In his view, even though the Board recognizes the challenges with the established building line and the ordinance, this is in the spirit of what the Board is trying to do today, and that is to approve this request and move along.

Mr. Colling commented the aerial photo shows the density of the trees between 281 and 333 Orchardale. He doubts that anyone could tell the difference in the setbacks of the homes due to the foliage between them. He referred to the site plan again and commented that if using the average building setback line, it substantially reduces and penalizes this applicant. In Mr. Colling's opinion, that is definitely curtailing their property rights. He then asked if the entrance to the house could be shifted a little to west and maybe not require any variance. It would be an option.

Ms. Bunch indicated the driveway runs right next to the house, and she would prefer to leave it as is. She doesn't want to lose a lot of the yard or the mature trees. Five feet of the encroachment on Stockport is an open porch.

Based on the interpretation discussion earlier, Mr. Koluch asked staff how long it would take to refigure this variance request recalculating the established building line based on tonight's recommendations. He suggested the ZBA table this request to allow staff time to recalculate the setback, hear the next case, and come back to this issue with the updated variance request.

The Chairperson asked staff to recalculate the new established building line based on tonight's recommendations. If the house at 333 Orchardale is not used to calculate the established building line, the established building line will not be used on the Orchardale side at all.

This case was tabled at 8:50 p.m.

This case was called back to the table at 9:16 p.m.

Chair Colling indicated the recalculation is being done on both setbacks because it's going to take some kind of action by the Board if they choose to ignore the Orchardale side. If the calculation takes this side out of the picture, then it's done.

Ms. Bunch pointed out the established building setback line on Stockport doesn't run parallel to the house, and goes through the front of the house. She asked if a variance is not granted will she have to move the house back behind the line.

Mr. Colling clarified part of the house right now touches the setback line, and if the line is not parallel to the house, part of the house is nonconforming as it exists. Obviously, this home was built long before the established building setback came into play.

Ms. Bunch indicated this is a hardship for her because it gives her very little space to even build additional living space.

The Chair explained the established building line came into play after the subject house was built, which is a hardship. The reason it's a hardship is because effectively that established baseline makes the home nonconforming. When the house was built it was conforming. He does not feel it's within the purview of this Board to create a situation where the home was built in conformance and now finds itself nonconforming because the ordinance was changed and established a baseline setback that did not exist when the home was built.

Mr. Hetrick recalled the same situation occurred to a dentist office on Tienken Road. The structure became nonconforming because of the additional right-of-way. The Board granted a one foot variance in that case.

Ms. Roediger indicated that in looking at the calculations for Orchardale - if the existing house was included which has an 80 foot setback off of Orchardale, the house to the south at 333 Orchardale that has a 72 foot setback, and the house to the south of that at 365 Orchardale has a 66 foot setback - the three houses added together and averaged, then subtract the 10 feet would result in a 62.6 established building line. Along Stockport, the existing home has a 47 foot setback, the house at 1525 Stockport has a 64 foot setback, and the house at 1507 Stockport has a 61 foot setback. The three houses added together and averaged, then subtract the 10 feet would result in a 47.33 established building line. So the requested additions would still require a variance on both sides from the established building line.

Mr. Colling reiterated the house was built in 1961 and the earliest mention of an average setback line was in 1962. This house was conforming to all zoning ordinances when built. It predates the baseline calculations in the ordinance. The baseline as calculated makes the house nonconforming. He went through State of Michigan training 20 years ago, where they specifically addressed issues similar issue to this, where you have to give the homeowner the benefit of the doubt based upon situations where the home predates the ordinances. In the subject case, the baseline calculation strips off better than 50% of the

allowable building envelope on this property. It is a hardship to the owner. The baseline establishes a situation where the home is nonconforming as it exists and he feels that these things brought upon by the ordinance, are a hardship that this homeowner can't overcome and get enjoyment out of the property that a normal resident would get by constructing an addition where there is plenty of room on the property to build. As much as he hates to issue any variance in this case, his recommendation is to issue the variances with the proviso that staff uses this as a test case to inform the Planning Commission, City Council and the City Attorney's office as to the hardship this average setback situation causes. In today's environment, most homes are built on the minimum amount of land possible with the largest footprint possible. The subject home has a huge building envelope but the owner can't enjoy this same right because of the established building line. This is an infringement upon a homeowner's right.

Mr. Hetrick agreed that the Board should approve this variance request.

There was still some question about the exact amount of the variance. Mr. Colling suggested the motion be phrased to reflect "the variance amounts will be based upon the final calculations of staff", and does not list specific numbers.

A resident in the audience questioned the setback amount of the subject house from Orchardale. He indicated staff said the setback was 80 feet, but the drawings indicate 70 feet. Ms. Roediger indicated if the average setback calculations used the 70 foot setback rather than 80 feet, the average setback would result in a 59.3 setback.

Mr. Artinian indicated the setback number he used in the calculation is from a measuring software tool that staff uses, this is the only means he has to calculate the setbacks. He does not believe it's 100% accurate, but close enough to use.

MOTION by Koluch, seconded by Brnabic, in the matter of File No. 17-012, that the request for a variance from Section 138-5.101-B (Established Building Line) of the Rochester Hills Code of Ordinances to grant a front yard setback variance on the Orchardale Dr. side, and a front yard setback variance on the Stockport Dr. side, Parcel Identification Number 15-16-251-001, zoned R-1 (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 will unreasonably prevent the owner from using the property for a permitted purpose, and 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 a 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, because the homes are spaced over 100 feet apart, because calculation of the established building line on the Orchardale side is based upon a single neighboring property, because the established building line was adopted after the residence was completed, and strict application of the established building line automatically causes the home to be nonconforming as is.*

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 based on the unique circumstances of the property.*

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 areas.*

Conditions

Approval of the variance is subject to the following:

That the amount of the variance requested for each road identified is based upon the final calculations of staff and adheres to the site plan provided by the applicant.

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

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

2017-0222

PUBLIC HEARING - FILE NO. 99-002

Location: 110 South Blvd. W., located on the north side of South Blvd., west of S. Rochester Rd., Parcel Identification Number 15-34-477-016, and zoned O-1 (Office Business) with an FB-3 Flex Business Overlay.

Request: A variance of 9 feet from Section 138-11.102.B.4.a. (Location of Off-Street Parking and Loading Spaces, Setback from Residential Districts) of the Code of Ordinances, which states where the parking lot abuts a residential district at the side or rear lot lines, the parking lot shall be setback a minimum of 10 feet from the lot line. The submitted parking lot maintenance plan is requesting a 9 foot westward extension to the existing parking lot, encroaching into the required side yard setback 9 feet.

Applicant: Salman Abrou
1044 Rochelle Park Dr.

Rochester Hills, MI 48309

(Reference: Staff Report dated May 1, 2017, prepared by Sara Roediger, 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. Salman Abrou, 1044 Rochelle Park Dr., Rochester Hills, MI, the property manager, and Mr. George Karmo, the applicant's civil engineer came forward, introduced themselves and gave a summary of the request. Mr. Abrou explained the existing parking lot is not big enough for the present tenants, even though 25% of the building is vacant. He can't lease the space because of the shortage in parking spaces. The only way to add more parking spaces is on the west side. The adjacent property is zoned residential, but is used as a utility substation by DTE Energy. There is a wall surrounding the DTE's equipment, and this is where the variance is requested. The west border length is about 233 feet and he is only asking for a fraction of this length. The variance would provide a great improvement for the property. Mr. Abrou displayed a site plan of the proposed parking on the projector. The area in red is the new parking.

Chairperson Colling commented the proposed parking abuts the DTE substation to the west. He asked if the northwest corner of the property abuts residential property.

Mr. Abrou replied yes.

Ms. Roediger explained everything on the west side of the subject property, even to the north of the property, is residentially zoned. There is a home that is kitty-corner to the property and directly north of the substation with trees in the back yard.

Mr. Colling asked when the DTE substation was built and if it predates the residential properties.

Ms. Roediger does not have the answer.

Mr. Colling has a hard time believing that a parking lot which sits on the ground would be more obtrusive than a substation abutting the home.

Ms. Roediger said when the applicant came to the counter to look at different options to address the lack of parking, he found he could build one or two more spaces without needing a variance, but that doesn't do much for the problem at hand. In looking at what is adjacent to the property, it could very well be zoned office; it wouldn't have an impact on the use. The property next door is residentially zoned, but what's unique is that the use isn't going anywhere. It's a highly screened, non-residential use, that isn't likely going to be redeveloped in the future. Ms. Roediger feels this is a unique circumstance that would justify coming before the Board with the variance request.

Chairperson Colling asked if staff heard from anyone as a result of the 300 foot

mailing.

Ms. Roediger confirmed staff has received no calls, emails or letters regarding this request.

Mr. Colling commented this is probably the most single unique situation he has ever had come before the ZBA. He asked how critical the parking situation is and if the six or seven spaces gained by the variance will alleviate the problem.

Mr. Abrou said that seven additional spots plus the 40 he already has, equates to a 15% - 18% hike, so he feels this will make a big difference. These additional parking spaces will allow the owner to lease the vacant space.

The Chair asked if staff has any objection to this variance at all, the answer being no.

Mr. Colling opened the floor for Board discussion. No Board member had any objections to the variance request.

MOTION by Koluch, seconded by Chalmers, in the matter of File No. 99-022, that the request for a variance from Section 138-11.102.B.4.a. (Location of Off-Street Parking and Loading Spaces, Setback from Residential Districts) of the Rochester Hills Code of Ordinances to grant a side yard setback variance of 9 feet, Parcel Identification Number 15-34-477-016, zoned O-1 (Office Business), with an FB-3 Flex Business Overlay, 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 parking adjacent to residential districts will unreasonably prevent the owner from using the property for a permitted purpose.
2. Granting the variance will do substantial justice to the applicant as well as nearby property owners by permitting a use 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. 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, that the adjacent residentially zoned property is used for a utility substation and is not and will not be used for residential purposes.
5. 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.
6. 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.

7. *The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.*

8. *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 Chalmers, that this matter be Approved. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

2017-0223

PUBLIC HEARING - FILE NO. 16-015

Location: 92 E. Auburn Rd., located on a Meijers outlot at the southeast corner of S. Rochester and E. Auburn Rds., Parcel Identification Number 15-35-100-055, and zoned B-3 (Shopping Center Business)with an FB-3 Flex Business Overlay.

Request: A variance to allow signage with internally lit plastic letters, pursuant to Section 138-8.603.A.3 (Flex Business Overlay, Signs, Designs and Materials) of the Code of Ordinances, which prohibits internally lit plastic letters or plastic box signs. The submitted sign permit applications are requesting 4 wall signs and 1 monument sign to be internally lit.

Applicant: Andrew Zielke, Just Burgers & Fries, LLC
4564 Oakhurst Ridge Rd.
Clarkston, MI 48348

(Reference: Staff Report dated May 2, 2017, prepared by Sara Roediger, 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. Andrew Zielke, Just Burgers & Fries, LLC, 4564 Oakhurst Ridge Rd., Clarkston, MI, the applicant and property owner, came forward, introduced himself and gave a summary of the request. He was accompanied by his wife, Vicky Zielke. Mr. Zielke stated he split off an outlot in the Meijers parking lot, and had the option of developing under the regular B-3, Shopping Center Business zoning or the FB-3, Flex Business zoning. He elected to follow the Flexible Business option. At that time, he did not know the sign ordinance was as strict as it was, considering that all the other signs in the area are internally lit plastic letter signs. He is trying to achieve a harmonious look to the community and allow for the plastic letter signs, and make it look uniform with what is already there. Mr. Zielke pointed he was one of the first developers to follow the FB-3 Flex Business and in speaking with staff, understands the signs ordinance may be changed to allow for internally lit signage. He is requesting the variance in order to use the standard Culver's signs.

Mr. Colling commented that Meijers, the shopping center and the bank all have similar signage.

Ms. Roediger added that similar signage exists pretty much everywhere in the City. This is an interesting case in that sometimes when you write ordinances, some unintended consequences can occur. This is the first retail building that is being developed under the flex option. The intent of this district is to create a walkable downtown area. In downtown Rochester, the businesses use gooseneck lighting. There are not many internally lit signs. The flex overlay was applied throughout many parts of Rochester Road, Auburn Road and many long-standing commercial corridors. It is the opinion of staff that it doesn't make sense to try and force this look of signage onto the existing areas as individual properties redevelop under this option. The Building Department didn't even realize that these sign regulations existing in the zoning ordinance, because they are completely separate from the sign ordinance. This created confusion because the sign ordinance that exists versus the zoning ordinance regulations that exist for flex business districts don't necessarily jive very well together. In talking with the Building Department and the City Attorney, staff decided it was much simpler to take the regulations out of the zoning ordinance that are specific to the FB overlay and roll them into the sign ordinance. The City is currently in the process of going through a sign ordinance evaluation and update which will result in the FB regulations coming out of the zoning ordinance and going into the sign ordinance, and direction has been given to remove the regulations to prohibit internally lit signage. This is the direction that staff and the consultants are going in. Unfortunately, Culver's is caught in the middle having to conform with the language that is in effect today, with their grand opening coming up shortly. The revised sign ordinance will not be approved in time for their opening. Staff feels this site is pretty unique because of the conflicting ordinances and the timing of the project as it relates to an updated sign ordinance.

Mr. Colling commented that if the FB overlay was designed for a walking set-up, this situation isn't it. No one is going to walk down Auburn Road to Culver's - they will drive. Parking for Culver's is along the western property line. He asked if the signage as proposed would meet the sign ordinance, were it not for the FB regulations contained in the zoning ordinance.

Mr. McLocklin indicated yes, they would meet all the B-3 district sign regulations.

Chairperson Colling feels because of the uniqueness of the conflict between the FB ordinances versus the sign ordinances, and the fact that the proposed signs meet current sign ordinance regulations, that the Board grant this variance, because otherwise, within six months FB the regulations will be obsolete. The only way to move this project forward is to grant the variance as it complies with the current sign ordinance.

Mr. Koluch confirmed with the applicant that he must use the signs as proposed and that there are no other sign options.

Mr. Chalmers asked why the sign plans submitted in the packet are dated

August 5, 2016 and the applicant is just now coming forward for the variance.

Ms. Roediger explained the applicant was hoping that the sign ordinance would have been updated and approved by now.

Chairperson Colling stated that considering the fact that the Board knows this ordinance is going away, and staff will rely strictly on the sign ordinance regulations, and the proposed Culver's signs complies with the current sign ordinance, that settles things for him. He asked if anyone has any objections to granting the variance.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 16-015, that the request for a variance from Section 138-8.603.A.3. (Flex Business Overlay, Signs, Designs and Materials) of the Rochester Hills Code of Ordinances to permit four wall signs and one monument sign to be internally lit, Parcel Identification Number 15-35-100-055, zoned B-3 (Shopping Center Business) with an FB-3 Flex Business Overlay, 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 signs in the Flex Business Overlay District will be unnecessarily burdensome as other properties in the area are developed with internally lit signage.*
- 2. Granting the variance will do substantial justice to the applicant as well as nearby property owners by permitting signs that are 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 that this is the first retail property to be developed under these regulations and the regulations are currently in the process of being amended.*
- 5. 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.*
- 6. This variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the neighborhood.*
- 7. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.*
- 8. 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 Hetrick, that this matter be Approved. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

ANY OTHER BUSINESS

No other business was brought forward for discussion.

NEXT MEETING DATE

The next Regular Meeting is scheduled for June 14, 2017.

ADJOURNMENT

Chairperson Colling adjourned the meeting at 9:45 p.m.

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

Sandi DiSipio, Recording Secretary