

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, its 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 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