



Rochester Hills

Minutes

Zoning Board of Appeals

1000 Rochester Hills Dr
Rochester Hills, MI
48309
(248) 656-4600
Home Page:
www.rochesterhills.org

Chairperson Ernest Colling, Jr.; Vice Chairperson Kenneth Koluch

Members: Deborah Brnabic, Bill Chalmers, Jayson Graves, Dale A. Hetrick, Charles Tischer

Wednesday, May 9, 2018

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 6 - Deborah Brnabic, Ernest Colling, Jayson Graves, Dale Hetrick, Kenneth Koluch and Charles Tischer

Absent 1 - Bill Chalmers

*Also Present: Kristen Kapelanski, Planning Manager
Jack Sage, Ordinance Enforcement
Sandi DiSipio, Recording Secretary*

APPROVAL OF MINUTES

[2018-0188](#) November 8, 2017 Regular Meeting Minutes

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

Aye 6 - Brnabic, Colling, Graves, Hetrick, Koluch and Tischer

Absent 1 - Chalmers

COMMUNICATIONS

*Planning & Zoning News - November 2017 - March 2018 issues
Ordinance Amendments*

PUBLIC COMMENT

No public comment was heard on non-agenda items.

NEW BUSINESS

[2013-0126](#) **SIGN BOARD OF APPEALS**

FILE NO. 06-013

Location: The northwest corner of a parcel of land located on the west side of Crooks Road, north of Avon Industrial Drive and south of Hamlin Road, adjacent to the parcel identified as Parcel Number 15-29-228-004, zoned B-3 (Shopping Center Business).

Request: An extension of a variance to allow one (1) temporary real estate sign to continue to be located in the Avon Industrial Drive right-of-way immediately adjacent to Parcel Number 15-29-228-004 pursuant to Section 134-4 (2) e. - Prohibited Signs, of the Code of Ordinances which prohibits signs from being located in the public right-of-way unless authorized by the county road commission, the state department of transportation or the city with jurisdiction over the right-of-way. The sign in question is an advertising sign for the M-59 Crooks Business Park. The Business Park is located on the south side of Avon Industrial Drive.

Applicant: Avon Star LLC/59 Avon LLC
P.O. Box 4013
Southfield, MI 48037

(Reference: Staff Report dated May 4, 2018, prepared by Kristen Kapelanski, Manager of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

Chairperson Colling read the request for the record, and asked the applicant to come forward and provide a summary of the request. Mr. Colling commented that three communications were received regarding this request - the first is an email from Al DiSipio who owns Al's Auto Wash across the street, asking that the variance be denied; the second is a letter received from Tom Costigan, owner of J. Thomas Jewelers, a tenant at 2254 Crooks Road, requesting the variance be denied; and the third is a letter from Daniel DeClerck, the business owner of Green Meadows Lawnscape, 2359 Avon Industrial Drive, asking that the variance be denied.

Mr. Brett Everhart, the applicant representing Avon Star LLC, came forward introduced himself, and explained he is here regarding the temporary real estate sign that has been located on this corner for the last 8-10 years. They are just asking that they be able to continue the sign at the same location. He has an industrial complex that is a block or two down Avon Industrial Drive. It's about 150,000 square feet with approximately 75 tenants within. As he's explained to the Board over the years, is one of the biggest complaints from the tenants prior to putting the sign up, was that their customers and delivery people had a hard time finding the complex. Because of the size of the complex and number of tenants, there is constant turnaround at this property. They have invested a lot of time and money in beautifying the property and are just asking to continue keeping the sign for the tenants and their customers, as well as to advertise that the property is there due to the fact it's not on a main road and competing against other properties in the area that have visibility and signage.

Ms. Kapelanski gave a brief summary of the sign's history. This request did come before the ZBA as a separate variance request several times and extensions were granted. In the October 2013 extension, it was noted that

extensions were adequate enough and that an additional variance would not be renewed. A new sign ordinance was adopted since that time, so this is a new variance request because of the provisions in the sign ordinance have changed. Staff did look at this in the analysis provided in the staff report; there are a number of findings that would apply. Staff did not feel that the requested variance met the findings necessary for approval. Ms. Kapelanski will be happy to answer any questions.

Chairperson Colling asked exactly how many years the permit has been granted - how long has the sign been in place.

Mr. Sage indicated the sign has been up since 2006. It was initially approved for one year, and then two five-year extensions. The sign has been in place for 12 years.

The Chair opened the public hearing at 7:10 p.m. and indicated he read the three pieces of correspondence received relative to this case earlier.

Mr. Al Santia, 37598 Paula Ct., Clinton Twp., MI 48036, the owner of Crooks Corner, the shopping center on the subject corner, came forward and introduced himself. He commented he was here five years ago and we all argued for an hour and a half about this, and he tried to tell the Board that Tim Horton's wasn't going to be happy about the existing sign. The Tim Horton's tenant is also present tonight and he's been on Mr. Santia's case since he moved in. He doesn't like the sign and feels the visibility of his building is being blocked. He's spent a lot of money on the landscaping to beautify the corner. Mr. Santia agrees with the tenant and feels the sign is an eyesore and unnecessary. He feels the 12 years the sign has been up is more than enough time. We talked five years ago that the applicant should discuss leasing some space from him, but they didn't want to have anything to do with that. The Board approved the extension, so he probably figured he can get the sign for free, why pay to lease space. He feels the applicant may have 2 or 3% vacancy and doesn't need the sign up anymore. If they need advertisement for their property, the applicant can talk to him, which he hasn't ever done.

Mr. Koluch asked if the existing sign is the same one that was up five years ago - wasn't there a larger one?

Mr. Santia said the old sign was larger and was actually located further down from the existing location. The Board told the applicant to decrease the size, and somehow he got to move it closer to the road.

Mr. Colling thought at one point, someone illegally cut down the sign.

Mr. Santia explained his tenant did not know the sign had been granted a variance. When he was doing the landscaping work, he accidentally cut it himself.

Mr. Colling said no, you don't accidentally cut down a sign, as long as it was put back up. It was stated the sign wasn't really put back up.

Mr. Koluch asked if today's sign is smaller than the one that was there five years ago.

Mr. Santia said the sign is smaller than the one that was there in 2006, and that was part of the condition of the last extension. He indicated the problem with the corner is that the Tim Horton's and the shopping center sits lower, so when you're at the corner, all you see is the sign. He feels it's unfair to him.

Ms. Brnabic asked if there was a disagreement in regards to the placement of the sign?

Mr. Santia said at the last meeting he asked that the sign be moved to the other side of the driveway facing Avon Industrial Drive. The applicant said no, and the Board agreed.

Ms. Brnabic commented that the applicant probably felt he would not have as much exposure - was that the reasoning behind that decision? She just wants to re-verify the facts since the property owner is speaking.

Mr. Santia said as far as he can recall, that was the applicant's reasoning behind it. He felt it wasn't close enough to the intersection for people to see the sign.

Ms. Brnabic is asking this question because Mr. Santia said the applicant didn't want to pay a fee to lease a piece of property for the sign from him. Did this disagreement also include the placement of a sign?

Mr. Santia said he told the Board at the last meeting that Tim Horton's might need a sign variance, so if that happened maybe they could be granted a little larger sign to accommodate advertising the applicant's structure on that sign. The applicant said he didn't want to do this.

Chairperson Colling feels the relevant fact in this case is that no attempt was either made or negotiated for in any case, so the Board is working again on a variance at this point. He thanked Mr. Santia for his comments

Mr. Ravinder Saini, 2258 Crooks Road, Rochester Hills, Michigan, a franchisee with Tim Horton's, came forward and introduced himself. He'd like to express his disappointment. He explained when he went to the City to open the Tim Horton's, he had to go through certain plan review standards. He feels the sign does not meet those architectural standards that he was held to. He also gets questions from his guests if the Tim Horton's is for lease. They don't realize the sign is for an industrial complex down the street. If you are heading north on Crooks, the sign is actually in the line of sight of his building. The sign used to be located further to the west along Avon Industrial Drive, and when the sign was reinstalled, it was moved east. Between \$5,000 and \$7,000 is spent annually on the landscaping, as the center takes pride in being the best on the block. This sign does not do them justice or the investment they are putting into the business and property to change the image of the subject corner.

There being no one else wishing to speak, the Chairperson closed the public

hearing at 7:18 p.m., thanked the speakers for their comments, and opened the floor for Board discussion.

Mr. Colling stated that for the last 12 years, the applicant has had an unfair advantage that no other business in the City had with an off premise business sign. 12 years is more than enough time for people to figure out where the applicant's building is located. Google maps and GPS programs are available on people's smartphones, so there is no reason why people can't find the business. This is the fifth or sixth extension the Board is being asked to grant, and because of the timeframe involved and the fact that the applicant has made no attempt to try and negotiate for some other signage from the individual that owns property that would be beneficial to him, he is not inclined to grant this variance. Mr. Colling feels the applicant has had more than a fair chance to do something with the sign, and won't continue to give him free advertising.

Mr. Koluch doesn't think the sign necessarily blocks anything - you can see through it, but it is certainly not in character with everything else that is there. In 2006, the aerial looked a lot different than it does now, and it looked a lot different five years ago as there are two restaurants on site now, and the large storage units in the area. He said at the last extension request, there was a vacancy issue, but it's probably not the case right now. Potential tenants in the past needed to see the sign if they've never been there before, but most cars today have a GPS system. Mr. Koluch is inclined to deny the variance request. There have been a lot of changes in the area since the sign has been up, and the reasons the extensions were granted before are no longer relevant.

Mr. Hetrick indicated one of the points made by the public comments was vacancy rate, and asked the applicant what the vacancy rate is.

Mr. Everhart responded about 10% vacant. He explained when he purchased the property, there was a permanent brick sign that was always at the same location where the sign is today. When they originally asked for the sign, that brick sign was dilapidated and falling down. He was inclined at that point to replace the existing sign with something nice with some type of stone or brick, but the sign wasn't part of an easement. They were willing to replace the sign, but ran into some problems. When the current sign was initially taken down by Tim Horton's, he talked to Mr. Sage of the City for almost a year to get the sign back up.

Mr. Hetrick referred to the permanent sign that was there, and asked if it was in a location that was within the ordinance.

Mr. Sage explained he's going back 30 years, and that there was a very dilapidated sign located on the shopping center's private property.

Mr. Everhart didn't believe the original sign was on shopping center property - he's assuming that Steve Stolaruk owned the strip mall and property at one time

Mr. Hetrick said if the sign wasn't appropriate by ordinance or wasn't on the applicant's property, it's a moot point. He feels the person whose rights are being deprived are more the mall owner than the applicant. He also feels 12

years is plenty of time for the sign and with a 90% occupancy rate, the applicant is doing a good job of selling the property. It's also very clear in the variance that was granted five years ago, that that was the last extension that will be granted by the Board. He sees no reason to revisit that.

Chairperson Colling pointed out that the Board had a similar situation some years ago with Walnut Brook Condos, where they kept renewing their real estate sign based on low occupancy. But there comes a time where a business needs to stand on their own. There has been a sufficient number of years in this case, as with the one cited above, and there comes a point where the Board needs to pull the plug. He pointed out the applicant has other options available; lease some signage from the mall owner, do things on the internet or put signs along M59 that are visible. There are other opportunities to help the applicant's business out. He does not see a reason to continue to grant variances indefinitely to allow the applicant an advantage no other business in the City has.

Member Chalmers enters @ 7:23 p.m.

Ms. Brnabic agrees with comments made by Board members. She also agrees with Mr. Koluch about the sign not blocking the view of the building. The applicant was told five years ago that two five-year extensions would be enough and the variance would not be renewed. The Board did give the applicant every consideration for circumstance leniency when the extensions were granted. The applicant was asking for something temporary, so it was compared to a temporary real estate sign - which is not permanently installed and to be displayed for a limited period of time. The sign is in the right-of-way. The Board has been lenient, and by the applicant being before the Board again amounts to him asking for an indefinite amount of time and for something that is permanent. Ms. Brnabic can't agree to grant this variance again either.

Mr. Chalmers apologized for being late, indicated he reviewed the packet, feels the Board is leaning towards denying the request, and he agrees.

Mr. Graves agrees with everything that has been said and doesn't have much more to add other than to comment he's a little disappointed the applicant didn't take the advantage of the five year extension to come to some agreement with property owner to get a permanent sign.

Mr. Tischer echoed the members' comments, and what's been said is good.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 06-013, that the request for a variance from Section 134-4(2) - Prohibited Signs, of the Rochester Hills Sign Ordinance to allow a sign within the right-of-way, Parcel Identification Number 15-29-228-004, zoned B-3 (Shopping Center Business), be **DENIED** because a competent, material, and substantial evidence **does not** exist in the official record of the appeal that supports all of the following affirmative findings:

1. Special conditions or circumstances do not exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the B-3 district.

2. *A literal interpretation or application of the provisions of Chapter 134 would not deprive the applicant of property rights commonly enjoyed by other properties in the B-3 district under the terms of Chapter 134.*

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

Condition:

The sign will be removed and the landscaping corrected within 72 hours, starting 5/10/18.

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, Graves, Hetrick, Koluch and Tischer

ANY OTHER BUSINESS

Updated pages of the Zoning Ordinance were given to the members. Ms. Kapelanski commented that a few of the ordinance changes were the result of the Board's request; staff has changed the established building line to average front setback, and detached accessory structures now have a sliding scale for the maximum size based on the size of the parcel.

Election of Officers

Chairperson Colling opened the floor for nominations.

MOTION by Koluch to nominate Mr. Colling as Chairperson. Mr. Colling accepted the nomination.

MOTION by Brnabic to nominate Mr. Koluch as Vice-Chairperson. Mr. Koluch accepted the nominations.

Mr. Colling asked if there were any other nominations. No other nominations were heard, and the Chair closed the nominations and called for a vote to elect Mr. Colling as Chairperson, and Mr. Koluch as Vice-Chairperson. The Planning Staff will remain as Secretary.

Ayes: All Nays: None

MOTION CARRIED.

There was no further business to come before the Board.

NEXT MEETING DATE

The next Regular Meeting is scheduled for June 13, 2018.

ADJOURNMENT

Upon Motion by Hetrick, seconded by Tischer, Chairperson Colling adjourned the meeting at 7:30 p.m.

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

Sandi DiSipio, Recording Secretary