



Rochester Hills

Minutes - Draft

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 8, 2019

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 6 - Bill Chalmers, Ernest Colling, Jayson Graves, Dale Hetrick, Kenneth Koluch and Charles Tischer

Excused 1 - Deborah Brnabic

Quorum present.

Also present: Kristen Kapelanski, Manager of Planning
Robert White, Ordinance Supervisor
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

[2019-0174](#) April 10, 2019 Regular Meeting

A motion was made by Koluch, seconded by Hetrick, that this matter be Approved as Presented. The motion PASSED by an unanimous vote.

COMMUNICATIONS

A) *Planning & Zoning News dated March/April 2019*

Chairperson Colling moved Election of Officers after the Public Hearing.

PUBLIC COMMENT

Chairperson Colling opened Public Comment at 7:02 p.m. Seeing no one come forward, he closed Public Comment.

NEW BUSINESS

[2019-0175](#) **PUBLIC HEARING - FILE NO. 19-016**

Location: 3536 Emmons Ave., located at the southwest corner of Herrod and Emmons Ave., south of Auburn and west of Dequindre, Parcel No. 15-36-405-029, zoned R-4 One Family Residential

Request: A request for a variance of three feet from Section 138-5101 C (Foot Notes to the Schedule of Regulations) of the Code of Ordinances, which requires a minimum side yard setback of 15 feet for corner lots in the R-4 One Family Residential zoning district. Submitted plans for a proposed addition indicate a side yard setback of 12 feet from the side lot line to the addition.

Applicant: Robert Carpenter
3536 Emmons Ave.
Rochester Hills, MI 48307

(Reference: Staff Report prepared by Ms. Kapelanski dated May 1, 2019 and various application documents had been placed on file and became part of the record thereof).

Present for the applicant was Robert Carpenter, 3536 Emmons Dr., Rochester Hills, MI 48307.

Mr. Carpenter stated that he was present for a Variance to build a porch at the end of his house. He said that he did not realize he needed a Variance, so he was present for approval. Chairperson Colling indicated that it was not quite that simple. He asked if there were any underlying, extenuating circumstances.

Mr. Carpenter responded that he had two young children, and it was difficult, in bad weather, to get them in and out of a vehicle. The proposed porch would be off the end of his driveway his fiancé used to get the kids in and out. Chairperson Colling explained that an extenuating circumstance was a physical difficulty, such as an engineering situation or a hardship with the property that would hinder an applicant's ability to follow codes. He added that just wanting something did not necessarily qualify as a hardship.

Mr. Carpenter stated that he understood. He said that a lot of homes had attached garages, but his did not. His garage was on the other side of his property. They could not get their children in and out of the house with ease, especially in bad weather. He stated that there were other issues with the property. There was a pathway around the corner of his home where there were downspouts, and it was a trip hazard in the wintertime. There was a constant ice dam, and he was afraid it would create a problem for his family. He was afraid to let them be outside in the winter.

Ms. Kapelanski summarized that the applicant was proposing a

wraparound porch, and the north side would project three feet into the required side yard setback. The applicant was seeking a Variance of three feet for that. The applicant had outlined the reasons he believed a Variance was warranted, and staff had included motions for approval and denial in the packet.

Chairperson Colling disclosed that he lived at 3227 Emmons, which was about three blocks away from the applicant. He also put a porch on his house, and when he did that, the zoning setbacks were different. He took an appeal before Mayor Ken Snell and Council who, at the time, chose to change the setback from 25 to 15 feet to accommodate requests like his. He stated that it would not affect his decision one way or the other, but he wished to make a full disclosure.

Chairperson Colling said that he understood Mr. Carpenter's want; he had wanted a similar thing. He said that unfortunately, the setback was already at 15 feet. There was not a house in the neighborhood that did not have downspouts and the same ice issues. A lot of people did not have gutters on their homes, but they had drip edges. He observed that Mr. Carpenter would meet the requirement for the front yard, but not the side yard. He maintained that there were no conceivable, extenuating circumstances he could see as a practical difficulty that would warrant a Variance for the property.

Mr. Hetrick said that he drove by the house, and noticed that there was a fence in front of the garage. He asked why. Mr. Carpenter said that it was there when he bought the home, but it kept the kids in their play area. It was usually where he parked. Mr. Hetrick asked if the fence opened and allowed Mr. Carpenter to park in the garage, which was confirmed. Mr. Hetrick asked why he would not be able to park in there and take groceries through the side door. Mr. Carpenter explained that the way the property was arranged, in order to use that, they would have to go in through the dining room and then into the kitchen. His fiancé currently parked where she could go directly into the kitchen at the end of the house. He reiterated that it was easier to get his kids in and out there. Mr. Hetrick asked what the practical difficulty was in parking in the garage area and walking through the other room. Mr. Carpenter said that there was a sliding glass door, and it was not a main entry door. He added that there were a lot of kids' toys in the garage, and it was not practical for his fiancé to park in the garage. It was easier for her to park in the other location. Mr. Hetrick asked if he could take things in through the sliding glass door if he had to park in the gated area. Mr. Carpenter agreed that he could, but that it would not be as practical.

Mr. Koluch said that it sounded as if Mr. Carpenter had a little bit of an unusual setup between the garage and the house that was not ideal. If things were reversed, it would probably be a lot easier. However, he explained that the standard needed to be met in order to get a Variance was difficult. It was not just a matter of wanting to do something or making things a little easier; an applicant had to show that different criteria were met. He did not really see a practical difficulty, and he did not see any unique circumstances with the property. It was set up a little differently, but he thought that a lot of houses in the subdivision were set up similarly. Some had attached garages and some did not, but he did not think Mr. Carpenter's was unique enough to meet the two findings needed for a Variance to be granted.

Chairperson Colling asked Mr. Chalmers if he had any comments, and he stated that he did not. Mr. Graves also had no comment.

Mr. Tischer echoed his colleagues' comments. He offered that Whole Foods delivered, and he had deliveries weekly to his door, which he suggested to think about for the future.

Chairperson Colling closed the Public Hearing at 7:16 p.m.

MOTION by Koluch, seconded by Hetrick, in the matter of City File No. 19-016 that the request for a variance from Section 138-5.101 C (Foot Note to the Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a **side yard setback variance** of three feet, Parcel Identification Number 15-36-405-029, zoned R-4 (One Family Residential), be **DENIED** because a practical difficulty does not exist on the property as demonstrated in the record of proceedings and based on the following findings:

- 1. Compliance with the strict letter of the restrictions governing the minimum setback for the established building line will not prevent the owner from using the property for a permitted purpose in a reasonable manner, and will not be unnecessarily burdensome.*
- 2. Granting the variance will not do substantial justice to nearby property owners as it will allow an expanded use of a residential home not consistent with the established building line.*
- 3. There are no unique circumstances of the property that necessitate granting the variance.*
- 4. The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to*

support similarly unwarranted variances in the future.

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

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

Excused 1 - Brnabic

Chairperson Colling stated that the request for a Variance had been denied. Mr. Carpenter said that he was sorry to hear that. He asked if the neighbors did not have a say in the matter, because there were multiple neighbors who absolutely did not object. Chairperson Colling responded that there were no letters of support. He stated that if an unwarranted Variance was granted, then anyone else who came in, no matter the Variance - how egregious or harmful - the ZBA would have just set a legal precedent that they must grant. He stated that he knew it was painful, and he had been through it himself. He was denied several times, until he was successful in having the Ordinance changed. Mr. Carpenter asked what he had to do for that. Chairperson Colling advised that he would have to approach City Council and the Mayor's office, but quite frankly, he felt that a 15-foot setback was probably the minimum there could be without being in the public right-of-way. There had to be some sort of a buffer between the house and the road in case of utility work or sewer problems. He knew that it was an architectural projection, but it still counted as a dimension. Mr. Carpenter said that it would not create an issue with traffic or sidewalks, and nothing would change. He did not park in the street because of it. Chairperson Colling said that he understood, but it was the board's responsibility to interpret the laws, and the requirements had not been met. Mr. Carpenter asked if it he should get neighbors to submit a letter, commenting that there was no one present objecting. He asked if the ZBA was an elected board, and Chairperson Colling stated that they were all volunteers, except for Council member Hetrick. Mr. Hetrick emphasized that their job was to follow the law.

UNFINISHED BUSINESS

2019-0154

Request for Election of Officers for 2019 - Chairperson and Vice Chairperson for a one-year term to expire the first meeting in April 2020.

Upon nomination by Mr. Koluch, Chairperson Colling was unanimously re-elected as Chairperson for a one-year term to expire the first meeting in April 2020.

Upon nomination by Chairperson Colling, Mr. Koluch was unanimously re-elected as Vice Chairperson for a one-year term to

expire the first meeting in April 2020.

ANY OTHER BUSINESS

Chairperson Colling apologized to the Board. He said that he did not like getting into those "contests." He did not want the situation to get out of control, and he hoped that he was not too abrupt. It was not his favorite task to deny someone. He understood the situation, but there was a right way to handle something, and demanding it was not the right way.

There was no further business to come before the Zoning Board of Appeals.

NEXT MEETING DATE

Chairperson Colling reminded the ZBA Board that the next Regular Meeting was scheduled for June 12, 2019 (subsequently cancelled).

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals, Chairperson Colling adjourned the Regular Meeting at 7:21 p.m.

Ernest J. Colling, Jr., Chairperson
Rochester Hills Zoning Board of Appeals

Maureen Gentry, Recording Secretary