



# Rochester Hills

## Minutes - Draft

### Zoning Board of Appeals

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Rochester Hills, MI  
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*Chairperson Ernest Colling, Jr.; Vice Chairperson Kenneth Koluch*  
*Members: Deborah Brnabic, Bill Chalmers, Jayson Graves, Dale A. Hetrick, Charles Tischer*

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Wednesday, August 14, 2019

7:00 PM

1000 Rochester Hills Drive

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## CALL TO ORDER

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

## ROLL CALL

**Present** 6 - Deborah Brnabic, Bill Chalmers, Ernest Colling, Jayson Graves, Kenneth Koluch and Charles Tischer

**Excused** 1 - Dale Hetrick

Quorum present.

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

## APPROVAL OF MINUTES

[2019-0363](#) May 8, 2019 Regular Meeting

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

## COMMUNICATIONS

A) *Planning & Zoning News dated May, June and July 2019*

## PUBLIC COMMENT

*Chairperson Colling opened Public Comment for items not on the agenda at 7:02 p.m. Seeing no one come forward, he closed Public Comment.*

## NEW BUSINESS

[2019-0364](#) **PUBLIC HEARING - FILE NO. 19-032**

Location: 307 Michelson Rd., located on the north side of Michelson, south of

M-59, east of Rochester Rd., Parcel No. 15-35-326-030, zoned R-4 One Family Residential

Request: A request for a variance of 29.24 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum rear yard setback of 35 feet in the R-4 district. Submitted plans for a proposed new home indicate a rear yard setback of 5.76 feet to the rear property line.

Applicant: Arkan Hallak  
43539 Holmes Dr.  
Sterling Heights, MI 48314

*(Reference: Staff Report prepared by Ms. Kapelanski dated August 7, 2019 and various application documents had been placed on file and became part of the record thereof).*

*Present for the applicant were Arkan Hallak, 43539 Holmes Dr., Sterling Heights, MI 48314 and Dr. Frank Hanna, J & A Civil Engineering, Inc., 18832 Rosewood Dr., Macomb Twp., MI 48042.*

*Dr. Hanna thanked the board for the opportunity to explain their problem with the property, which had a unique condition. It had been part of a regular subdivision and had been a regularly-sized lot. When M-59 was developed, they "chopped" the property into a triangle shape. Initially, they proposed a house with a setback of 5.76 feet from the M-59 right-of-way. He noted that there was a wall in the back about 60 feet away. They had been asked to go before the ZBA and explain why they needed this particular rear yard setback variance. They had submitted an example showing that if they complied with the 35-foot requirement for the setback, they could only get a small house of about 720 s.f. He claimed that the architect had a hard time coming up with a plan that could work for the client to build a house. If they complied with the setback, the family room would be about 124 s.f., and the shape would not be too usable, and the garage would be half of the buildable area. They hoped to be able to get a variance to build a better house, which he maintained would be nice for the neighborhood and function well for the client.*

*Chairperson Colling opened the Public Hearing at 7:10 p.m. Seeing no one come forward, he closed the Public Hearing.*

*Chairperson Colling asked the applicants if they were aware that to get a variance, there had to be an extenuating circumstance. He explained that there would have to be a practical difficulty that prevented them from following the Ordinance. What was proposed constituted the owner's*

*desire to build in a particular format, but there had not been a practical difficulty presented.*

*Dr. Hanna stated that the practical difficulty was that they could only build a 720 s.f. house where the rooms would not be usable. Chairperson Colling disagreed, because, as shown in the staff report, the minimum square-footage requirement for a house was 912. The applicant's building envelope, based upon staff calculations, was 1,700 s.f. Even at a 716 s.f. footprint, as shown on one drawing, for a two-story house, that would be 1,400 s.f., so he determined that the minimum building requirements could easily be met.*

*Dr. Hanna agreed that if they built a two-story house, it would be 1,400 s.f., which was more than the Ordinance required. However, he reiterated that it would not allow them to build usable rooms. The family room at 124 s.f. could not even hold a couch and T.V. He added that it would be a really awkward shape.*

*Ms. Kapelanski stated that the zoning had been noted, as had the requested variance, for a rear yard setback of 5.76 feet. She pointed out that the lot was irregularly shaped because of the M-59 right-of-way positioning which bordered the rear of the yard. The lot was only 100 feet deep at its longest point, and the resultant house would be oddly shaped and triangular, which she agreed would make some of the rooms unusable. She noted that there were motions provided for approval and denial in the packet, and that she was available for any questions.*

*Chairperson Colling observed that two sets of plans had been provided, and one showed a proposed floor plan in what the applicants thought was the building envelope. He asserted that there were other alternatives available that had not been shown in the plans. The applicant could easily move the garage from the front of the house and move the house closer to the front yard setback and build a detached garage that could be five feet from the rear property line. He reminded that they did not have to have an attached garage, which told him that there were other building alternatives that had not been explored. He felt that a reasonable home could be built on the lot without needing a variance. His concern was that if granted, the house would be 5.76 feet from the M-59 right-of-way. If M-59 was widened, the wall would be moved. Construction equipment would be brought in to do that, and it would be a mess. He stated that he was not in favor of granting the variance that close to a State highway right-of-way that had a high likelihood of being widened at some point. Additionally, there were drainage issues to consider. The hill from the*

*back of the wall would funnel water right towards the home, and if it was only 5.76 feet from the lot line, a lot of that water would be around the base of the home.*

*Vice Chairperson Koluch said that he had a lot of the same thoughts as Chairperson Colling. He agreed that it was a strange shaped lot. It was zoned residential and should have a residential use, and they did not want to deny anyone's ability or have it sitting there forever. He asked when the lot was purchased, and Mr. Hallak advised that it was two years ago. Mr. Koluch asked staff if anyone else had asked for a variance for the lot. Ms. Kapelanski said that they did not do an extensive search, but there had been no requests that she was aware. Mr. Koluch recalled that M-59 had been widened in the 1990's. He said that he was not an architect, but based on what he was reviewing, he thought that perhaps there might be a way to build a structure that met the requirements. He recapped that the proposed house would only be 5.7 feet from the property line, and he had a problem with that. He thought that it would look completely out of character with the way the lot was angled. He stated that he would not be in favor of granting the variance.*

*Chairperson Colling asked Mr. Hallak if he was aware of the shape of the property and the difficulty in trying to build on the lot when he bought it. Mr. Hallak said that he asked the City if he could build a house if he obtained the property, and he was told he could. Chairperson Colling clarified that he was aware that it was an odd-shaped lot when he purchased it. He asked if Mr. Hallak's architect told him that there would be a problem building on a triangular-shaped lot, and he replied that he did not. Chairperson Colling said that there was a degree of being aware when a purchase was made. He was not saying that the shape of the lot was not odd, but the issue was that a huge variance was being requested, and he felt that other alternatives existed that could produce a lesser setback variance that might be more acceptable to the board than 29 feet. He realized that everyone would like to have their ideal home on a lot that they purchased, but sometimes that was not possible. He thought that by eliminating the garage attached to the house and building at the 25-foot front yard setback, the applicant could achieve 90% of what he wanted. He noted that a detached garage only had to be ten feet away from a home, and it could be five feet from the side or rear property line, which would solve a lot of the problem. He acknowledged that a detached garage might not be an ideal situation, but it would allow the building envelope to be used for the home in a manner that would give a bigger, more conventional home.*

*Ms. Brnabic agreed with Chairperson Colling and Vice Chairperson Koluch that there were options. She agreed that the lot was odd-shaped. She was curious as to why the garage was shown on one side on one plan and on the other on another plan. She wondered why the same example was not shown for each setback. Dr. Hanna was not sure; he was the engineer, not the architect. He said that the architect worked over ten days on the project, trying to get the best house for the property. Chairperson Brnabic said that she understood, it was just that the garage was shown on the west side on one plan and on the other, it was moved to the opposite side of the house to show what they would like to have. She pointed out that the garage took up a lot of room, and if it was detached, they could have a larger home.*

*Mr. Chalmers noted that he built and developed for a living, and he always heard inspectors saying that they were there to help people from other contractors. He remarked that in this case, it would be the architect. He said that there was a reason for the required setback, and to put the corner of the house five feet from M-59 did not seem reasonable. In addition, with the drainage issue that would result, as Chairperson Colling had mentioned, he was not in favor of granting the variance.*

*Mr. Graves echoed the same sentiments. He commented that it was a nice try to show the garage taking up most of the buildable envelope, but he agreed that there were other options. He said that he would be surprised if someone spent ten days trying to figure something out. It was also interesting to note that the applicant was aware that the property afforded some challenges, and that it would potentially limit the options. However, he believed that they could apply the rules to the project and still get something that was livable.*

*Mr. Tischer echoed his colleagues' comments. He mentioned that he had worked for a number of years in the Water Resource Commissioner's Office. He knew that there could be the potential for a lot of drainage issues, and that water could be very destructive to homes. He would be worried about having a home being five feet from the property line, especially if it was decided to widen M-59. He agreed that the lot was challenging, and he also agreed that there were other options that should have been explored. It sounded like the right questions were not asked, such as about having a detached garage.*

*Chairperson Colling summarized that the applicants had heard the board's opinions. He thought that the matter could be given a lot more thought, and that they could come back before the board asking for a*

*much lesser variance that would not encroach on the M-59 right-of-way. He offered that staff would be willing to help. If they had come asking for a five-foot or less variance, because of the shape of the lot, he might have been inclined to grant that. It would not be encroaching on M-59, and it would leave room to expand. A 29-foot variance would just not fly with him. He indicated that he normally did not say it, but if they wanted, they had the option to reconsider and come back with a request for a lesser variance without having to pay another fee. He suggested that the matter could be tabled until that time. He said that he was proposing that option, otherwise, he would have to call for a vote, which he presumed would be denied.*

*Dr. Hanna said that they would accept the option. Chairperson Colling asked if the board was in agreement, which the members verified, and he asked for a motion to table.*

**MOTION** by Tischer, seconded by Koluch that in the matter of City File No. 19-032, request for a rear yard setback variance of 29.24 feet for 307 Michelson Rd., the Zoning Board of Appeals hereby tables the request until the next meeting.

**A motion was made by Tischer, seconded by Koluch, that this matter be Tabled . The motion PASSED by an unanimous vote.**

*Chairperson Colling stated that the matter would be tabled for 30 days. He asked the applicants if they could be ready to come back by September 11, which they confirmed. He asked them to work with staff to try to get the least possible variance based upon the comments from the board.*

*Dr. Hanna said that he appreciated the opportunity and the input. He wanted to clarify that the house would not be five feet from the wall; it would be 60 feet. There was a ditch over 25 feet away at the top of the bank, and the center was about 30 feet away. Chairperson Colling said that he was familiar with the area, and they would still be close enough to have drainage issues from the slope of the property. If M-59 was widened, the wall could be closer, and he wanted to avoid that if at all possible.*

*Chairperson Colling explained that it was a unique property, and he wanted to give the applicants the benefit of the doubt, but he felt that a 29-foot variance was way out of line and more than they would normally give. He wanted the applicant's architect to understand the issues and explore other options. He knew that a detached garage was not what*

*everyone wanted, but it would afford the ability to build more house within the allowable footprint. He doubted that the garage would need a variance. He hoped to see a better plan and a much lesser variance request if the applicant returned.*

### **ANY OTHER BUSINESS**

*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 September 11, 2019.

### **ADJOURNMENT**

Hearing no further business to come before the ZBA Board and upon motion by Mr. Koluch, Chairperson Colling adjourned the Regular Meeting at 7:25 p.m.

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Ernest J. Colling Chairperson  
Rochester Hills  
Zoning Board of Appeals

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Maureen Gentry  
Recording Secretary