



Rochester Hills

Minutes - Draft

Zoning Board of Appeals

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

Wednesday, September 11, 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 - Deborah Brnabic, Bill Chalmers, Ernest Colling, Dale Hetrick, Kenneth Koluch and Charles Tischer

Excused 1 - Jayson Graves

Quorum present.

Also present: Kristen Kapelanski, Planning Manager
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

[2019-0400](#) August 14, 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 August 2019*

PUBLIC COMMENT

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

UNFINISHED BUSINESS

[2019-0364](#)

CITY 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 10 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 25 feet to the rear property line.

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

(Reference: Staff Report prepared by Ms. Kapelanski dated September 4, 2019 and revised plans for a Variance request 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.

Chairperson Colling opened the Public Hearing at 7:05 p.m. Seeing no one come forward, he closed the Public Hearing.

Chairperson Colling summarized that at the last meeting, the applicants had asked for a Variance of 29 feet, and the board made it clear that they would not grant that request, and they asked the applicants to reconsider to see if there was something more manageable.

Dr. Hanna said that they tried to work as much as possible on a smaller Variance, and they now showed a setback of 25 feet from the rear property line. He noted that the M-59 right-of-way wall would be about 79 feet away from the proposed house, and the ditch would be about 40 feet away from the nearest corner of the house. They felt that the new proposed house would function better and serve the client's purposes a lot better, but it would need a Variance. They looked at some of the offices to the east of the project, and he handed out aerial photos. They had observed that the buildings were closer to the M-59 right-of-way than their house would be. If it was necessary to expand M-59 in the future, it would only be by one or two lanes, which would still give them enough separation from the house to the highway. He stated that they hoped the board would approve their request.

Ms. Kapelanski noted that two different options had been submitted, and the 25-foot setback was preferred by the applicant.

Chairperson Colling indicated that he was a little surprised, because they had discussed the possibility of having a detached garage for the home. He stated that a much less Variance would be needed, if at all, with a

detached garage, and he was curious why they did not consider that option.

Dr. Hanna said that if they went ten feet from the buildable area, the available area for the garage would be 16.4 feet, so they would still need a Variance. Going toward the east, the triangle made the buildable area even smaller. Chairperson Colling said that a detached garage would never approach five feet from the rear lot line, and it would not require a Variance. The space being used for the garage could be living space. He asked why they were insisting upon an attached garage. Dr. Hanna clarified that it was the desire of the owner.

Mr. Chalmers asked Dr. Hanna about the aerial photos. Dr. Hanna said that just east of their project, there were offices that were much closer to the highway than the proposed house would be. Mr. Chalmers asked if he knew the exact distance. Chairperson Colling said that the fence line was the right-of-way, and those properties did not encroach on the right-of-way, so they were not closer than the house would be. He reminded that office buildings were governed by different requirements, and they were at the correct setback. He added that a commercial property was not relevant to the subject residential property, and one could not be compared to the other under the Ordinance.

Mr. Chalmers said that he wanted to make sure that the applicant was not alleging any type of precedent, because the board did not see that. If he was, they would need additional information. He asked if that was the purpose of the pictures. Dr. Hanna said that the purpose was to show that the proposed house would be further from the highway than the office buildings, and he clarified that he was not alleging any type of precedent. Chairperson Colling said that without dimensional verification, they did not know that the buildings were closer.

Mr. Hetrick said that what the applicants did not state in the introduction was the practical difficulty and why they must have a Variance. Dr. Hanna noted that the lot was shaped like a triangle, and that made it difficult to put up a house that would function well and serve a family living in it. The whole idea was have a house that people were happy with instead of having a really awkward-shaped house. Mr. Hetrick indicated that there were awkward-shaped houses around. He wondered why a detached garage would not suffice. If they had one, they would not have any practical difficulty building on the lot. Dr. Hanna said that there would still be a problem, because going to the east, the buildable area would be smaller, and if the house was "cut" at the setback line, the rooms would

not function right.

Mr. Hetrick asked the setbacks for a detached versus an attached garage. Chairperson Colling said that a detached garage could be five feet from the side or rear lot line. Mr. Hetrick considered that the buildable area could be spread out to the east to potentially create the square-footage necessary.

Chairperson Colling noted that there was 367 s.f. taken up for the garage, and that could be area for the home if the garage was detached. He considered that it might require a minimal Variance for the other portion of the home, but it could be less than ten feet. Once the garage was ten feet from the house, they could encroach up to five feet from the rear and side property lines. If they took off the attached garage and turned it into living space, it would be quite a liveable home and quite a buildable space without requiring a ten-foot Variance. Theoretically, the house could be built without a Variance, and there would still be a nice-sized home. He stated that it was the insistence by the owner of having an attached garage that was killing the square-footage. In the surrounding area, there were homes with detached garages. They were perfectly acceptable options which would allow building within the code and give a livable home.

Mr. Chalmers asked Mr. Hallak if he was clear about what the members were saying when they talked about a detached garage versus an attached garage. Mr. Hallak asked how he could build a house in 2019 with a separate garage. Mr. Chalmers said that he did not want to argue the merits of housing stock; he just wanted it to be abundantly clear to Mr. Hallak that a garage that was not attached to the house could be a minimum of five feet from the lot line, and lot of the issues would go away. Mr. Hallak stated that he did not want a detached garage.

Ms. Brnabic said that she had looked at the plan for a 730 s.f. house. She added the square-footages, and she was not clear where some was being used. The kitchen was 150 s.f., and the great room was 316.2 s.f.; the bath was 33.6 s.f., and the staircase was 83.2 s.f. There was 180.7 s.f. left. A closet was shown, but she assumed that the closet would not be 180 s.f. She asked what she might have missed.

Dr. Hanna said that he did not calculate the square-footage. An architect designed the house and gave them that figure. Mr. Chalmers said that as a Civil Engineer, Dr. Hanna should have known that he had to confirm those calculations in order for the board to properly evaluate. Dr. Hanna

said that he did not check the square-footage, so he could not clarify what was missing.

Chairperson Colling stated that there had to be a demonstrated practical difficulty to grant a Variance. Lot shape would only come into that when it was impossible to build a livable structure. The applicant's desire for a specific style of home with an attached garage, did not constitute a practical difficulty. The applicant had to have a willingness to compromise. Although the Variance request was reduced, it was still quite large, and if compromises had been made, something buildable could be done within the buildable envelope. He said that he was not particularly enthralled with a ten-foot Variance. Five feet was more within reason, but he thought a better job could have been done if the applicant had demonstrated a willingness to entertain something different. All that had been done was a slight modification of the original design, when the board had tried to explain that it would not work.

Dr. Hanna said that he disagreed. The previous Variance request was almost 30 feet and they were asking for ten. Chairperson Colling said that they had not granted Variances in the past to homeowners with triangular-shaped properties who had asked for lesser Variances. If the subject request was granted, he would be doing a disservice to those in the past. He stated that he could not, in good conscience, grant the request when there was not a willingness on the part of the applicant to entertain an option that would work. It was a buildable lot, and a very good-sized home could be built without a Variance - bigger than many in R-4. If he had heard a practical difficulty, he would entertain the request, but so far, he had not heard one.

Dr. Hanna said that he did not see the point of a precedent, since the distance from the proposed house to the wall would be 79 feet. Chairperson Colling said that the point was that they were asking for a Variance when they had a perfectly fine, buildable envelope if their desires were modified. The home the applicant wanted to build did not fit in the building envelope based upon the desire to build in a specific manner. He stated that it did not constitute a practical difficulty. It might be what the applicant wanted, but it might not be what he was able to build, which was the point.

Mr. Koluch agreed with Chairperson Colling. He understood wanting to have an attached garage, because it would make the property more desirable. If they were able to fit a house with the minimum square footage required on the lot with a garage, attached or not, and everything

else satisfied the Ordinance, he did not understand where there was a difficulty and why a Variance needed to be requested, other than the fact that the applicant wanted to have a bigger house. He stated that he could not support the application, and he did not see why a house could not be built with a detached garage.

Ms. Brnabic said that she agreed with the previous comments. Mr. Hetrick asked Mr. Hallak if he would consider building a home with a detached garage, and Mr. Hallak nodded his head. Mr. Hetrick said that was his best option.

Mr. Koluch said that if everyone's math was wrong and there was no way of doing that, it would be appropriate to come back before the board asking for a Variance. Chairperson Colling referred to the 850 s.f. home plan. Under the Ordinance, a detached structure had to be ten feet away from the home. If they went ten feet to the east and built a 720 s.f. garage, they would never encroach more than five feet into the rear or side yard. Dr. Hanna said that they would agree to a five-foot Variance, and they would try to do the best. Chairperson Colling said that he could not grant the Variance without seeing the plan with a detached garage. He suggested that they took another look at the plans without an attached garage to see if they even needed a Variance. Dr. Hanna said that he agreed they could do a plan with a detached garage, but the applicant's preference was for an attached garage. He indicated that they lived in Michigan with snow in the winter. He noted that the request for a five-foot Variance did not affect the entire house. Chairperson Colling said that he understood, but a setback Variance was based on the design of the home. He said that he understood the desire for an attached garage. He had a detached garage, and it could be an advantage and a disadvantage. Based upon the shape of the lot, there were not many alternatives that would allow the biggest building envelope without a Variance. He felt that it was worth investigating a plan showing a detached garage. If the applicants wanted the board to vote on the plan for a five-foot Variance, he would call for a vote. If they wanted to submit a plan with a detached garage, they would look at that, but they applicant had to make the call.

Mr. Hallak said that he liked the plan for the 1,700 s.f. home. Chairperson Colling said that if they took the garage space and took both stories, they would get an additional 650 s.f. of living space. If the house was redesigned slightly, they could come up with a much lesser Variance than five feet. It would require a detached garage ten feet away from the home, and that garage could be a maximum of 720 s.f., which was twice the size of the garage that was currently proposed.

Mr. Hallak said that he liked Rochester Hills, and he would like to own a nice house there. He liked the downtown and went there almost every week. Dr. Hanna said that Mr. Hallak had misunderstood, and he did not want a detached garage. Chairperson Colling asked them to pick either the five or ten-foot Variance request and tell them which they wanted considered. Dr. Hanna said the five-foot.

Chairperson Colling asked if staff had checked the setback measurements. Ms. Kapelanski confirmed that Mr. White of the Building Dept. did.

Mr. Hetrick said that he was trying to understand if the structure was moved to the east if a Variance would be needed for the two-car garage versus one for the house. Ms. Kapelanski said that if the entire structure, including the attached garage moved to the east, they would be requesting a larger Variance. Chairperson Colling said that it could not be moved further to the west because the home was already at the minimum side yard setback. The only alternative would be to use a detached garage and take the garage square footage into the house and adjust the plan accordingly, or request the five-foot Variance.

Mr. Hetrick asked if there had been Variances granted against M-59. Ms. Kapelanski said that they did a brief search and did not find any Variances granted in the immediate area, but they did not research the entire length of M-59. Chairperson Colling said that in his 20 years on the board, they had never granted one for the area because of the M-59 right-of-way. Mr. Hetrick said that there was a wall in the backyard, and he had wondered what might have occurred in the past with regard to things along M-59. Ms. Kapelanski advised that right-of-way for M-59 was required in 1966 with some portions in 1972.

Mr. Koluch asked if there was a way to figure out within the building envelope on either drawing if there could be a detached garage to the west that complied with the minimum size with a house that satisfied the 1,400 s.f., and if it would all fit without needing a Variance. Ms. Kapelanski said that there was not a way without laying it out. If there was a detached garage, no Variance would be required. Mr. Koluch wondered if the detached garage was moved further to the east if they could get a 1,400 s.f. house in the remaining area. Ms. Kapelanski said that they might be able to get close to 1,400 s.f. without a Variance or with a very minimal request if the garage were detached.

Ms. Brnabic believed that when a garage was attached to a home, the

square-footage was not included in the size. Ms. Kapelanski agreed. Chairperson Colling calculated that if the garage was detached, the applicant could get a home about 1,800 s.f. (and have a 720 s.f. detached garage).

Mr. Hetrick felt that it was pretty clear that if the home was to be built without a Variance, a detached garage was the way go to. That was what the board was saying. Dr. Hanna said that he understood, but his client did not want that. Mr. Hetrick remarked that he would like to have a giant patio in his backyard, but that would violate the Ordinance, and he would be unable to do so.

Hearing no further discussion, Mr. Koluch moved the following, seconded by Mr. Chalmers:

MOTION by Koluch, seconded by Chalmers, in the matter of File No. 19-032, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow a new house with a 5.76-foot rear yard setback, Parcel Identification Number 15-35-326-030, 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 four (4) findings:

Findings:

1. Compliance with the strict letter of the restrictions of the Zoning Ordinance 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 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 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. The granting of this variance could encourage further incursions upon the Zoning Ordinance which would result in further variances being considered by the Zoning Board of Appeals and could be construed as removing the responsibility of meeting the Zoning Ordinance from applicants and those wishing to build similar structures within the City.

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

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

Excused 1 - Graves

Chairperson Colling stated for the record that the request for a Variance had been denied.

ANY OTHER BUSINESS

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

NEXT MEETING DATE

Chairperson Colling reminded the members that the next Regular Meeting was scheduled for October 9, 2019 (subsequently cancelled).

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals and upon motion by Mr. Hetrick, Chairperson Colling adjourned the Regular Meeting at 7:50 p.m.

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

Maureen Gentry, Recording Secretary