



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

Wednesday, December 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, Ernest Colling, Jayson Graves, Dale Hetrick, Kenneth Koluch and Charles Tischer

Excused 1 - Bill Chalmers

Quorum present.

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

APPROVAL OF MINUTES

[2019-0583](#) November 13, 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

There were no Communications presented.

PUBLIC COMMENT

Chairperson Colling opened Public Comment at 7:01 p.m. Seeing no one come forward, he closed Public Comment.

NEW BUSINESS

[2019-0582](#) **CITY FILE NO. 19-043**

Location: 510 Driftwood Ave., located west of John R., north of Avon Rd., Parcel No. 15-14-430-010, zoned R-3 One Family Residential.

Request: A request for a variance of three (3) feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum side yard setback of 10 feet in the R-3 One Family Residential Zoning District. Submitted plans for a proposed garage indicate a side yard setback of seven (7) feet.

Applicant: Father & Son Construction
5032 Rochester Rd.
Troy, MI 48085

(Reference: Staff Report prepared by Ms. Kapelanski dated December 4, 2019 and application documents had been placed on file and became part of the record thereof).

Present for the applicant were Michael Nimmo, Father & Son Construction, 5032 Rochester Rd., Troy, MI 48075 and Jennifer Hamilton, property owner at 510 Driftwood Ave.

Mr. Nimmo explained that there was an existing garage with an attached breezeway that had been there over 60 years. They would like to tear down the garage and breezeway and rebuild a two-car garage on the same footprint. They wished to be able to utilize the same footings and improve the structure's living condition and eye appeal. He claimed that it would impede the project if they were to shrink the garage.

Ms. Hamilton added that the garage was in pretty poor shape and needed to be redone. The driveway was very narrow, and it went against the seven-foot setback line, but she did not have the finances to expand the driveway.

Ms. Kapelanski said that she really had nothing further to add. The applicant was requesting a three-foot side yard setback variance. There was an existing attached, one-car garage and breezeway that had been in existence for a long time.

Ms. Brnabic observed that the home had been built in 1949. She asked if that was correct, which Ms. Kapelanski confirmed. Ms. Brnabic indicated that it was actually 70 years ago. She summarized that the sub had been platted in 1925, and records back to 1984 did not show a lot split. The home currently had an attached garage and breezeway with a side yard setback of seven feet from the north property line. As far as they knew, the existing garage had maintained a seven-foot setback for 70 years. The request was to

build an attached two-car garage in the same area, which would not increase the nonconformity. She asked if that was correct, which was also confirmed. Ms. Brnabic noted that Section 138-5.100, Schedule of Regulations of the Code of Ordinances which required a ten-foot setback, had been referenced for the denial requiring the need for a variance of three feet. However, due to the fact that the existing attached garage was built at a seven-foot side yard setback 70 years ago, she questioned whether the request required a variance. She cited Section 138-3.104, Nonconforming Structures and read, "Expansion of one-family dwellings. With respect to any structure which is considered nonconforming due to its noncompliance with the required side or rear yard setback (and not withstanding subsection (A). Increase in nonconformity is prohibited), any enlargement or alteration of the structure which involves the extension of the existing side or rear building line shall be permitted without need for a setback variance or variance to this section, provided that the enlargement or alteration: 1. Is not located closer to the side or rear property line than the structure's existing nonconforming side or rear yard setback; 2. Is attached to a one-family dwelling located within an R-1, R-2, R-3, R-4 or RE zoning district and is designed for use as enclosed or screened living space; 3. Is not taller than 16 feet or one-story in height; and 4. Complies with all other requirements of this Ordinance and does not necessitate any other variances." She called into question the words enclosed or screened living space. The garage was enclosed, but she asked if the addition was required to be living space. That was the only thing she questioned about the above. She reminded that the Ordinance had been updated ten or 12 years ago at the request of the ZBA to accommodate older homes in the community that were built at a setback that was nonconforming by today's Ordinance standards. The problem had been that if someone wanted to put on an addition to an existing structure, it was required that the new addition had to meet the current side yard setback (in this case then feet). Having to meet the current Ordinance could affect the layout and design of the interior of homes, and it also left the outside design looking unsightly. She recalled working with Chairperson Colling on the Ordinance.

Chairperson Colling explained that the Ordinance also stated that someone could not rebuild more than 80% of a nonconforming structure. He pointed out that the proposal was for a total teardown,

not a rebuild or enlargement. That was prohibited by Ordinance for nonconforming structures. The garage was nonconforming, and the home conformed. The ZBA had enforced the 80% rule as far as he could remember, and they did not allow a full tear down and rebuild of a nonconforming structure to create another nonconforming structure in the City. Ms. Brnabic was suggesting that the new garage would not make it nonconforming. If the garage was deeper and the wall was longer and the garage took more footprint as a result, it would be enlarging a nonconforming structure because of the square-footage.

Chairperson Colling recalled a case where there was a fire at a greenhouse on Rochester Rd. The structure was nonconforming, and the damage to the greenhouse was more than 80%. By the Ordinance, the owner could not rebuild the structure, because it was more than 80% destroyed. If someone was executing a full teardown, they would be exceeding the 80% rule by reconstructing a nonconforming structure. He reiterated that the proposal was not an addition to a nonconforming structure; it was a total teardown and rebuild.

Ms. Brnabic said that she saw the part about nonconforming structures declared to be physically unsafe or otherwise damaged by means of fire. Chairperson Colling said that the applicant had stated that the garage was in bad shape. The ZBA did not know the condition of the garage and whether it could stand another 20 years or be reinforced and kept longer. His feeling was that if the garage could be repaired at less than 80% of the structure, he would not have a problem with it being restored. However, to tear it down entirely and rebuild on the existing footings was a problem to him because of the 80% rule and increasing a nonconformity.

Ms. Brnabic indicated that she understood what Chairperson Colling was saying. She considered that the applicants would be permitted to do an addition if it was not a teardown. Chairperson Colling said that they would be permitted to put on an addition as long as it did not increase the size of the nonconformity. Ms. Brnabic said that the nonconformity was the three feet. Chairperson Colling said that meant to him that they could extend the wall on the nonconforming line back another three feet and add something on to the garage. That assumed that they did nothing else to the garage. If they tried to tear out internal structures of the garage, he wondered at what point it

would exceed 80%.

Ms. Brnabic clarified that she meant that if they added onto the structure, as long as the other setbacks met the Ordinance, they would be able to add 20 feet to the structure to the back. There was no limit as long as the rear yard setback could be met, although they would have to consider other circumstances in the neighborhood.

Chairperson Colling noted that there was a tree behind the garage that would prevent the applicants from going back 20 feet. Ms. Brnabic said that she was just being hypothetical about the number of feet. She was bringing up the fact that the applicants would be using the same footprint, and the applicants were not requesting additional setback.

Chairperson Colling related that there had been no other requests in the neighborhood for the same type of variance. It was not an unusual occurrence in older neighborhoods in the City. He felt that there were other building options to be explored before he would want to grant a variance. They could keep the ten-foot setback and go back further, or they could put the garage wall against the house. They would need 20-22 feet for a garage. He felt that it would be feasible to go towards the back, although he acknowledged that there would be an expense for new footings and construction costs, but it would be the same thing anyone else would face.

Chairperson Colling said that the proposal was to tear down the entire breezeway, add to the side and do some other things, which would be essentially more than an 80% rebuild. The roofline would have to be changed, as well as the wall structures. They did not know what footings were underneath the breezeway, if any. He did not want to make the assumption that it would not add any more nonconformity by granting the variance, because they did not know what was required in terms of construction to meet the current codes. The City would not allow the applicants to put in a garage without appropriate footings.

Ms. Brnabic said that her premise was that the applicants would not be encroaching any further. Chairperson Colling said that the breezeway was not currently the size for a two-car garage, so they would have to pour concrete to enable the garage to be built. The

roofline would not meet the house - it would have to be changed. Ms. Brnabic had just thought that she might try something for the applicants.

Mr. Nimmo asked if the concern was primarily because they would be tearing things down. Chairperson Colling indicated that his concern was the Ordinance, which stated that they could not tear down a nonconforming structure and rebuild it entirely nonconforming. If someone tore down a nonconforming structure, they would have to conform to the Ordinance. If the subject garage was torn down, any new garage would have to conform to the Ordinance. Mr. Nimmo concluded that it would be ten feet, regardless. He asked if they kept it as it was and remodeled less than 80% if it would be okay. Chairperson Colling said that the Ordinance read 80% of the value of the existing structure. If the garage was worth \$5,000 and they were putting in \$20,000 to the project, it would be more than 80%. He asked what costs would be accrued to make the garage into a two-car and meet the Ordinance as it existed for footings underneath. They would have to put in footings alongside the house for the entire depth and width of the garage and put new walls in place. A significant portion of the roof would have to be rebuilt and re-shingled.

Mr. Nimmo asked if the garage was worth \$10,000 as it was, if he could not exceed \$8,000 in improvements. Chairperson Colling agreed that was pretty much it. It was premised on not tearing it down. If it was torn down, the Ordinance Ms. Brnabic read would not apply. It would be considered new construction at that point. Mr. Nimmo said that was why their argument was about it having been there for 70 years and also that the neighbors had no issues. Chairperson Colling said that it did not matter; it was what the Ordinance required. Mr. Nimmo wondered if he tore everything down, if he would have to move everything three feet in.

Mr. Hetrick asked Ms. Kapelanski how many lots in the subdivision were the same width as the subject parcel. He wondered how many other opportunities the ZBA could see from people in the sub who might want to create a nonconforming structure because their lot width was small.

Ms. Kapelanski put up an aerial of the neighborhood. Most of the

other lots were quite a bit larger. She saw only one other at 80 feet wide; most were 90 or wider. She did not believe that the ZBA would be setting itself up for a lot of other instances of the same type of request.

Mr. Hetrick said that as far as construction, one of the questions had to do with footings for the breezeway. He asked the applicants if that had been looked at to see if they were adequate to create a garage. Mr. Nimmo said that they would test and verify everything before they did anything. He said that the main thing that caught them was the side yard setback, which they knew had been there forever, and they would not encroach any closer to the neighbors. They just wanted to dress up the garage and make it look nicer and more structurally sound. He stated that anything that had to be done would be done per code.

Mr. Hetrick said that since Ms. Hamilton had a pretty tight budget, moving the garage further back and making it a detached two-car garage might be a possibility. Mr. Nimmo said that it would defeat the purpose - Ms. Hamilton wanted to have the comfort of an attached garage. Ms. Hamilton added that she had hoped to upgrade what was there. She realized that it would be a complete tear down, but she felt that it would raise the home value by having a two-car attached garage.

Mr. Hetrick asked if she would be able to create an attached garage by moving the garage towards the back of the yard with a ten-foot side yard setback. He said that if an attached garage was important, it could be moved back and still be attached.

Mr. Nimmo said that they wanted to create a nice roofline. Chairperson Colling said that they understood, but he reiterated the question of whether it could be built back further and meet the required setback line and still be attached. Mr. Nimmo said that he might be able to move it back, but it was the side yard setback that was the concern. He would have to move it back and over. He said that they would have to shrink the garage by three feet. Mr. Hetrick said that it would not have to be shrunk by three feet; it would just be moved three feet. Mr. Nimmo said that the proposed garage was 22.2 feet. It was seven feet to the property line. He would have to move it away from the property line three feet towards the house. It

would make it a 19-foot garage. Chairperson Colling said that it would not necessarily. If it was moved back and attached to the corner, they could still get a 22-foot width. It would just tuck in behind the house. He said that they understood that it was not the perfect solution with the gable. Mr. Nimmo responded that he did not know if he could do that. Mr. Hetrick suggested working with staff to come up with a design. Mr. Nimmo said that when there was a gable coming down and he moved the garage to the back and the gable was reversed, he could see more of a possibility. If the peak was at the front of the house instead of the side, he might be able to do something. Mr. Hetrick stated that when Ms. Brnabic was going through a potential option, it became a nonstarter because the garage was being torn down rather than being rehabilitated at less than 80% of the cost. They were in a position where the practical difficulty did not exist, or there was not some kind of hardship that would prevent them from building the garage where it stood. Their option would be to move it back and over.

Mr. Nimmo said that if he moved it back and over, he would have a real problem trying to blend in the roof line. Chairperson Colling said that he did not have to connect the roof line. They had seen people build detached garages with a connected breezeway from the home to the detached garage. It was still considered an attached garage because it attached to the structure. The members were trying to point out that there were alternatives. They were questioning whether any had been explored, but it did not sound like it. Only one plan had been put forth. He understood that it might not be the best solution for the owner, but unfortunately, they were between a rock and a hard spot with the tear down of the old garage. He could not change the Ordinance, and he could not give approval when they had denied other folks in the exact circumstance.

Mr. Hetrick asked why they were changing from one car to two. Ms. Hamilton said that the breezeway needed to be torn down, and there did not seem to be a point in rebuilding it to connect to a one-car garage. Everything needed to be updated and up to code, so she chose the one with the most value. Mr. Hetrick said that it made sense. If Ms. Hamilton was going to spend the money for a two-car garage, he suggested that they could create a detached garage with another breezeway. That would give exactly what she wanted - a two-car garage attached by a breezeway - and it would be 100%

conforming.

Chairperson Colling asked if a one-and-a-half car garage would work. Ms. Hamilton agreed that it could. Chairperson Colling stated that they could build a one-and-a-half car garage and meet the Ordinance. He recalled that he had the same issue when he wanted to build a garage. He had a two-car, shotgun garage. He could not get a variance to build the width he wanted. He knew that there were ways to build two-car garages without having to build them side by side in a single, prescribed manner. The alternative of a car-and-a-half garage would give plenty of storage space, meet the Ordinance and they would be able to tear down the garage. He thought that other alternatives needed to be considered other than a variance.

Mr. Hetrick felt that point was well taken. If they were willing to move the footprint over three feet, they could still go backwards, as long as they provided a ten-foot side yard setback. He lived in another city where the previous owner had built a very large garage. He could park a Triumph Spitfire sideways in the back of the garage and park two cars in front of it. He had the equivalent of a three-car garage, and Ms. Hamilton could have the same thing.

Chairperson Colling asked if any other members had anything to add. Mr. Graves and Mr. Tischer stated that everything had really been discussed. Hearing no further discussion, Mr. Koluch moved the following:

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 19-043, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to grant a variance of three (3) feet, Parcel Identification Number 15-14-430-010, zoned R-3 (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 attached accessory buildings 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 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 their desire to construct an attached garage closer to the lot line than permitted on the property.*
5. *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.*

Chairperson Colling said that he was sorry, but the variance had been denied. Mr. Hetrick asked them to keep in mind the options that were presented. He felt that they could get exactly what they wanted. Ms. Hamilton agreed, but she did not think that it would look as nice, which she thought was sad for Rochester Hills. She said that she understood what had been said, and she would keep those options in mind.

ANY OTHER BUSINESS

2019-0590

Request for approval of the 2020 ZBA Meeting Schedule

MOTION by Hetrick, seconded by Koluch, the Rochester Hills Zoning Board of Appeals hereby establishes its 2020 meeting schedule at the December 11, 2019 Regular Meeting as follows:

*The second Wednesday of each month
at the Rochester Hills Municipal Offices,
1000 Rochester Hills Road, Rochester Hills, Michigan
at 7:00 PM Michigan Time*

2020 MEETING DATES

January 8, 2020; February 12, 2020; March 11, 2020; April 8, 2020;
May 13, 2020; June 10, 2020; July 8,
2020; August 12, 2020; September 9, 2020; October 14, 2020;
November 11, 2020; December 9, 2020

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

NEXT MEETING DATE

Chairperson Colling reminded the ZBA members that the next Regular Meeting was scheduled for January 8, 2020.

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals, Chairperson Colling adjourned the Regular Meeting at 7:36 p.m.

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

Maureen Gentry, Recording Secretary