



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, January 8, 2020

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, Jayson Graves, Kenneth Koluch and Charles Tischer

Excused 1 - Dale Hetrick

Quorum present.

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

APPROVAL OF MINUTES

[2020-0010](#) December 11, 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 December 2019*
- B) *Ordinance Amendments No. 184 and 186*
- D) *Training Session Flyer - RRC*

PUBLIC COMMENT

Chairperson Colling opened Public Comment for items not on the agenda at 7:01 p.m.

Trevor Luzenski, 42540 Dequindre Rd., Shelby Township, MI 48317
Mr. Luzenski stated that he had purchased a home in December 2018, and he was never told about the proposed construction on Dequindre. He

wished to find out who he might talk to about it. He noted that he had received an invite (public hearing notice) to the meeting, and he felt that he was welcome to come. He had brought documents from his home transaction which showed that the previous owner had never said anything about what was being done. He had reached out to the Road Commission and received other documents that said that the previous owner had received compensation for the right-of-way. He said that everyone he had reached out to did not know what to tell him, and he was just trying to get some answers.

Chairperson Colling responded that generally speaking, when people bought a home, they went through a title search company. He asked Mr. Luzenski if he had gone through a realtor, which was confirmed, and said that there was a due diligence period to research a property. If the property owner had received compensation and then decided to sell, it would have been disclosed in the title that the boundaries had changed. He was not sure why the realtor missed that. He asked Mr. Luzenski what information he was looking for.

Mr. Luzenski said that his documents stated that the owner did not know if any work being done, however, there was work being done this year, although he had signed off that he was not aware of the work. Chairperson Colling stated that it was a matter for a real estate attorney, and the Commissioners could not advise him. Mr. Luzenski stated that he was just not sure who to go to, but he reiterated that he had been invited to the meeting, and he thanked Chairperson Colling for the information. Chairperson Colling explained that with zoning matters, everyone within 300 feet was notified.

Chairperson Colling closed Public Comment at 7:05 p.m.

NEW BUSINESS

2020-0009

City File No. 19-049

Location: 47441 Dequindre Rd., located at the northwest corner of Clovelly and Dequindre Rd., north of Auburn Rd., zoned R-4 One Family Residential, Parcel No. 15-25-433-016.

Request: A request for a variance of 3.85 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances which requires a minimum front yard setback of 25 feet in the R-4 One Family Residential zoning district. After a necessary taking of road right-of-way, the existing building will have a front yard setback of 21.15 feet from the new right-of-way.

Applicant: Road Commission for Oakland County
31001 Lahser Rd.
Beverly Hills, MI 48025

(Reference: Staff Report prepared by Ms. Kapelanski dated January 2, 2020 and application documents had been placed on file and became part of the record thereof).

Present for the applicant Sarah Gabis, Counsel for the Road Commission, 28411 Northwestern Hwy., Southfield, MI 48034.

Ms. Gabis indicated that Chairperson Colling had summed up the matter very nicely. She advised that the Road Commission was undertaking a necessary public improvement project along Dequindre Rd., which would require easements from property owners to widen the road. They had negotiated compensation for some owners, and had otherwise instituted condemnation action against other owners for the necessary easements. The subject site was one where a necessary taking would result in a setback that was less than required by Ordinance by 3.85 feet. They were requesting a variance on behalf of the property owner pursuant to the Uniform Condemnation Procedures Act. The specific section, 213.54 (2) had been outlined in her letter, which allowed the ZBA to grant a variance in its discretion if it was deemed appropriate. She said that she would be happy to answer any questions about the request.

Chairperson Colling asked for a little more explanation about the 3.85 feet. He noted that there was right-of-way on the applicant's property for the road. He asked if the road would go beyond the right-of-way so they would be taking 3.85 of what was not right-of-way. He thought that the setback was to the edge of the road. Ms. Gebis said that the setback was to the edge of the right-of-way, and the right-of-way would be increasing from 33 feet to 50 feet. That would reduce the setback for the front yard by 3.85 feet.

Ms. Kapelanski noted the memo from Mr. John Staran, City Attorney, in the packet. It stated that under the Uniform Condemnation Procedures Act, the normal practical difficulty standard could be considered, and the potential public benefits of the road project should be considered as well. As mentioned in the staff report, research could not find any other variance requests with respect to Dequindre Rd. improvements, but the ZBA had granted variances for Tienken and Livernois under the exact same circumstances.

Chairperson Colling opened the Public Hearing at 7:10 p.m. He asked if

anyone had any questions.

Mr. Chalmers observed that the engineering plan showed that sidewalk, curb and gutter would be installed. Ms. Gabis said that it appeared to be so. Mr. Chalmers concluded that if it was not there, there would not be a need for a variance. Ms. Gabis said that she could not specifically answer that, because she was not sure if a 50-foot right-of-way would still be required. She knew that part of the right-of-way included the plan for the sidewalk. Mr. Chalmers asked if she expected that the sidewalk would continue as long as they worked along Dequindre. Ms. Gabis apologized, and said that she did not know. She said that she would assume that the project would have the same concept along the length of the entire project.

Chairperson Colling asked Ms. Gabis if she knew how far from Dequindre and Auburn the sidewalk would run north. Ms. Gabis said that she did not know specifically, but the project would run the entirety of Dequindre through the City, so she assumed that the project had a similar plan for the entire stretch. Chairperson Colling noted that there was some undeveloped land, especially north of Hamlin. He doubted that they would put a sidewalk along there. There were subdivision homes from Auburn to Hamlin, however. He did not know if it would all be widened. Ms. Gabis said that if it was a necessary element of the ZBA's consideration, she could find out and come back to the board. Chairperson Colling did not think it would matter with the subject case, but he knew that she would be bringing more cases before the board.

Mr. Tischer said that he had also wondered if there were any other cases for which she would come back before the board. Ms. Gabis knew that there was one on the next meeting, which was being handled by the same attorney that was representing the present property owner. They did not have a condemnation action pending, so there was not as much of an urgency.

Chairperson Colling believed that when properties were purchased from homeowners, and they had not been condemned, the RCOC would still have to apply for a variance on their behalf. He asked if that was correct to make the property nonconforming.

Ms. Gabis said that they were not required to ask for a variance on someone's behalf. It would depend on the negotiations with a property owner and whether there was a desire to have a variance. Chairperson Colling knew of two homeowners that would have to be represented. Ms.

Gabis said that she would not represent the Road Commission if they had negotiated separately outside of the Uniform Condemnation Procedures Act to acquire easements. The Road Commission might negotiate with a property owner on its own, and the property owner might agree to what the Road Commission was asking, or they might negotiate separately.

Chairperson Colling understood that, but he questioned whether the Road Commission had to request a variance on behalf of individuals so their properties did not become nonconforming. Ms. Gabis responded that they were not required to. Chairperson Colling considered that they would be left with nonconforming properties as a result. Ms. Gabis was not sure which properties Chairperson Colling was talking about, so she would have to inquire with the Road Commission to see whether or not those property owners had negotiated with them. She only knew about the subject property. The Road Commission did not engage the same law firm for every parcel; they engaged multiple law firms.

Chairperson Colling pointed out that there were a number of homes along Dequindre from Auburn to Hamlin that would be affected. Whether or not the Road Commission arranged to buy properties to create the new right-of-way or not, the homes would be left nonconforming. He wished to know what was going on with those homes, and if the taking of the land would leave a nonconforming home. He said that he would like the Road Commission to come before the ZBA and let them know which homes so they could deal with all of them at once. He felt that the County had an obligation to make sure that it did not leave Rochester Hills with nonconforming homes as a result of the takings.

Ms. Gabis said that she would do her best to speak with the Road Commission about the properties that she did not represent to try and get an answer. Chairperson Colling said that he would like a list of the homes that would become nonconforming the next time they heard a case. Ms. Kapelanski said that staff would follow up with Mr. Staran to see if he had any insight as well.

Ms. Brnabic stated that she absolutely agreed with what Chairperson Colling had said, and she hoped that everyone would work together. She reminded that takings could affect property owners if they tried to sell their homes in the future, because the homes were left nonconforming. Through a variance, a property should not be considered nonconforming. Ms. Gabis agreed that if a variance was granted pursuant to the Act, it would last throughout all time, and the parcel would be considered conforming. As it related to all of the other parcels, she did not know

where those properties sat in relation to the road. Some might become nonconforming, and some might not be. It depended on where the house was sitting. In the subject case, the house would be sitting in an area that required a variance after the road widening. She was not sure about the other houses, but she reiterated that she would follow up with the Road Commission and share it with staff.

Chairperson Colling closed the Public Hearing at 7:19 p.m.

Mr. Koluch recalled that the last similar request they had was for Tienken Rd. property, and the request was for less than a foot. He believed that it was the only home in that section that came in front of the board. That was from May of 2016, and it was with a different law firm. Hearing no further discussion, he moved the following:

MOTION by Koluch, seconded by Tischer, in the matter of File No. 19-049, that the request for a variance of 3.85 feet from Section 138-5.100 of the Rochester Hills Code of Ordinances to allow an existing building to be located 21.15 feet from the proposed right-of-way, for 47441 Dequindre Road, Parcel Identification Number 15-25-433-016 be **APPROVED** because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with respect to the front yard setback for which this variance is granted.

1. The Zoning Board of Appeals finds that the public benefits associated with the Dequindre Road improvement project are significant and merit the granting of this variance as referenced by MCL 213.54 (2), the Uniform Condemnation Procedures Act.
2. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property as has been previously enjoyed and will be unnecessarily burdensome based on the recent improvements completed by the RCOC on Dequindre Rd.
3. Granting the variance will preserve a substantial property right for the applicant as has been previously enjoyed by this property owner and thus substantial justice shall be done.
4. A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.

5. *There are unique circumstances of the property that necessitate granting the variance as described in finding 1. above, and that distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations.*
6. *The problem is not self-created by the property owner as the change in ROW was dictated by RCOC.*
7. *The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.*
8. *Approval of the requested variance will not impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.*

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

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

Excused 1 - Hetrick

Chairperson Colling stated for the record that the variance had been approved. He said that he personally knew some of the homeowners along Dequindre, and several had talked to him about the widening issue. He explained that it was why he wished to have information about all of the homes that would be affected, and he did not want to see any nonconforming homes created as a result.

ANY OTHER BUSINESS

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

NEXT MEETING DATE

Ms. Kapelanski advised that if there was business to discuss, the next ZBA meeting would be held on February 5, 2020.

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals and upon motion by Mr. Koluch, seconded by Mr. Tischer, Chairperson Colling adjourned the Regular Meeting at 7:22 p.m.

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

Maureen Gentry, Secretary