



# Rochester Hills

## Minutes

### Zoning Board of Appeals

1000 Rochester Hills Dr.  
Rochester Hills, MI  
48309  
(248) 656-4600  
Home Page:  
[www.rochesterhills.org](http://www.rochesterhills.org)

*Chairperson Ernest Colling, Jr., Vice Chairperson Gerard Verschueren*  
*Members: Deborah Brnabic, Jim Duistermars, Adam Kochenderfer,*  
*Kenneth Koluch, Michael McGunn*

---

Wednesday, April 11, 2012

7:00 PM

1000 Rochester Hills Drive

---

#### CALL TO ORDER

*Chairperson Colling called the Regular Meeting to order at 7:04 p.m. in the Auditorium.*

#### ROLL CALL

**Present** 6 - Deborah Brnabic, Ernest Colling, Jim Duistermars, Adam Kochenderfer, Kenneth Koluch and Gerard Verschueren

**Absent** 1 - Michael McGunn

*Also present: James Breuckman, Manager of Planning*  
*Tim Hollis, Building Department*  
*Sandi DiSipio, Recording Secretary*

#### APPROVAL OF MINUTES

2012-0111 February 8, 2012 Regular Meeting Minutes

**A motion was made by Verschueren, seconded by Kochenderfer, that this matter be Approved as Presented. The motion carried by the following vote:**

**Aye** 6 - Brnabic, Colling, Duistermars, Kochenderfer, Koluch and Verschueren

**Absent** 1 - McGunn

#### COMMUNICATIONS

*Planning & Zoning News February and March 2012 issues*

#### PUBLIC COMMENT

*No members of the public came forward to speak on any non-agenda item.*

#### NEW BUSINESS

2012-0112 **PUBLIC HEARING - FILE NO. 12-004**

Location: 3488 Hazelton Ave., located on the south side of Hazelton, between S. Livernois Rd. and M-59, Parcel Identification Number 15-34-176-014, Zoned R-4, One Family Residential.

Request: A variance of 169.9 square feet from Section 138-10.102A (Detached Accessory Structures) of the Code of Ordinances, which limits the combined floor area of all detached accessory structures located on a lot to the ground floor living area of the main building or 720 square feet, whichever is less. In this case, the maximum permitted area for all accessory structures on the lot is 720 square feet. The existing garage is 710.4 square feet and the proposed addition to the garage is 179.5 square feet which would result in a total of 889.9 square feet, requiring a variance of 169.9 square feet.

Applicant: Daniel McNeil  
3488 Hazelton Ave.  
Rochester Hills, MI 48307

*(Reference: Staff Report, prepared by James Breuckman, dated April 4, 2012 and associated documentation has been placed on file in the Planning and Economic Development Department and by reference became part of the record thereof.)*

*Chairperson Colling read the request for the record, and invited the applicant to come forward to the presenter's table, state his name and address for the record, and provide a brief summary of the request.*

*The applicant, Mr. Daniel McNeil, 3488 Hazelton, Rochester Hills, MI 48307, came forward and summarized his request. He explained he has a small home built in 1949, with no basement, and no access for storage upstairs. As his family grew he needed storage. He called a contractor to obtain the permit to build a shed. The contractor was told a permit was not necessary for a shed in Rochester Hills. Mr. McNeil questioned this and called the City. He was told a permit was not required for a shed. He came to the City and picked up a brochure about building sheds -- it said you don't need a permit for a shed. It did not have an asterisk explaining the maximum total square footage allowed for detached structures on lots. Mr. McNeil went ahead and built a really nice small shed. He said he takes very good care of his property and house. Once the shed was built, the applicant thought he would like to slide the shed against the garage. So it was moved against the garage and nailed in place. The addition is beautiful with Anderson windows and a regular garage door that was cut to size to allow the tractor in. Mr. McNeil explained when he leaves his lawn equipment outside it's been damaged or stolen. He needs a secure place to store lawn equipment. Mr. Hollis from the Building Department then came to the house and explained he received a complaint that the applicant was building something. Mr. Hollis came in the back yard, measured everything and told the applicant he was over code. If the shed wasn't attached to the garage, it fits what he was told he could build - a shed not requiring a permit because it was less than 200 square feet. Mr. Hollis asked the applicant to file for a permit to apply for a variance, which he did. The subject shed is against his neighbor's fence and property and they are here in support of granting the variance. Mr. McNeil spoke to his other neighbors about the issue and they weren't even aware he built anything. The applicant has a good idea of who voiced the*

complaint against him, but that person no longer lives in the neighborhood. He then displayed photographs of the properties adjacent to him, explaining the excessive size and number of existing accessory structures on those lots. Mr. McNeil also displayed photographs of his back yard showing the garage and shed. He asked to be granted the small variance, as he has tried to do everything according to the law, went step by step and triple-checked the procedure he had to follow.

Chairperson Colling called for an explanation of the staff report.

Mr. Breuckman commented the applicant has done a very good job in explaining the facts in the case. This really is an instance where sheds under 200 square feet aren't regulated by the building code. But when they are attached to a garage, that's what triggered the issue at hand. No building permit was required for this shed. The subject lot is in an older part of the City, and the current codes don't necessarily match up with the reality of the older developments in some of the neighborhoods. There is an established precedent on many lots in this neighborhood having multiple accessory buildings that exceed the 720 square foot limit, so this is by no means a unique situation in the area. Granting this variance would not be setting any precedent. This one slipped, to some extent, through the cracks because of the 200 square foot limit. A lot of the other accessory buildings in the area are older and were built before the current ordinance was in effect. That is how we got to where we are today. Mr. Breuckman indicated he would answer any questions.

Chairperson Colling said it was mentioned that if the applicant had not attached the shed to the existing detached structure, a permit would not be required because it was under 200 square feet; correct?

Mr. Tim Hollis, the building inspector for the City introduced himself and clarified that whether it's attached to the existing garage or not really makes no difference, because the applicant is limited to 720 square feet of total detached accessory structures.

Chairperson Colling opened the Public Hearing at 7:20 p.m.

A letter was received from George and Bonnie Milke, 3475 Hazelton on March 29, 2012 stating they have no problem with granting the requested variance. Chairperson Colling read the letter into the record.

**Paul Laske, 3496 Hazelton, Rochester Hills, MI 48307** came forward and identified himself as the neighbor to the east of the applicant and probably has the clearest view of the structure in question. He complimented Mr. McNeil on the great construction and pointed out that it perfectly matches the existing detached structure. The shed gives the applicant somewhere to put his lawn equipment so that the cars may be parked in the garage. With the lot being an acre in size, the addition of a shed is not excessive. It makes the neighborhood look better. He has no issue with granting the variance.

**George Snow, 505 Harding, Rochester Hills, MI 48307** explained he does not want to influence the outcome of this case and did not want to speak until

after this case was decided. Chairperson Colling explained if he wants to speak, it must be during the public hearing. Mr. Snow came forward with concerns he dealt with when building his own home. He was very disappointed with how he was handled by the Building Department. The Chair indicated he is willing to speak with Mr. Snow after the meeting if requested.

Chairperson Colling closed the Public Hearing at 7:25 p.m. and turned the meeting over to the Board for discussion.

Mr. Kochenderfer stated he doesn't have any problems with the current request, and to the gentleman who spoke in public comment, if there are any other issues, he is always welcome to apply to this Board where each request is addressed on a case-by-case basis for full consideration.

Chairperson Colling clarified that this isn't the first time this type of case has been before the Board; some have been approved and some have been denied. He remembers one similar case in the Brooklands Subdivision where the wall was actually knocked out between the garage and the shed. This case went to court and was decided by a consent decree, where the court awarded the variance and the applicant had to pay double all the fines and permits. Mr. Colling feels the mitigating circumstances in this case are that the neighborhood is old and has a lot of nonconforming oversized structures in the area. This applicant has this same situation on either side of him and there are at least four similar situations in the general area, many with multiple structures. They are probably grandfathered in. In this particular case, Mr. Colling's personal opinion is that the applicant tried to get a permit and went out of his way to the City and whether he got bad advice, no advice or the wrong advice, he built the shed and is now stuck in this situation. He assumes the City is half wrong in this case because appropriate information was not given to the resident. Under the zoning training provided by the State of Michigan, whenever the benefit of doubt exists in favor of the resident, the Board should generally rule in the favor of the resident. Chairperson Colling would stand by this precedent.

Mr. Duistermars concluded that this situation is not self-created as the information from the City is what led the applicant to be in the situation that he is, through no fault of his own.

Mr. Koluch has no additional comment and has heard everything there is to hear. He's reviewed the brochure the applicant provided and agrees that he probably was provided incorrect information. It doesn't seem to be the applicant's fault. Mr. Koluch is in favor of granting the request.

Ms. Brnabic agrees and has no further comment.

Mr. Verschueren asked if any variances have ever been granted for something after it has been grandfathered in. He commented he sees no hardship in this case. The applicant could have built the shed anywhere in the yard without a problem, but decided to attach it to the garage near the property line causing the need for a variance. He could also move the shed.

Chairperson Colling clarified that it doesn't matter whether or not the shed is

attached to the garage, that is not the problem. It's the total square footage issue that is causing the need for a variance, so moving it would not solve the issue. Mr. Colling then mentioned two previous variance requests that the board heard relative to structures that were grandfathered in, so precedence has been set. Chairperson Colling then stated he feels the hardship in this case is that the applicant went to the City a couple of times to gain the appropriate knowledge as to what he could build. He was told he didn't need a permit to build a shed less than 200 square feet in size and wasn't told he couldn't attach it to the garage. The applicant acted in good faith. Mr. Colling personally interprets this as an unnecessary difficulty because the applicant spent time, money and effort to build the structure, and is guessing that with a good attorney, Mr. McNeil could go into court and get a consent decree to keep the structure. Rather than have this expense for the City and the applicant, Chairperson Colling is inclined to grant the variance.

Mr. Verschueren said he has nothing against granting the variance, but wants to make sure the Board follows the rules for granting variances.

Mr. Duistermars explained the case here is that when the applicant applied for permits, he was told that no permits were required for structures less than 200 square feet - however nothing was explained or written about "as long as the new structure when added to existing detached structures is less than 720 square feet". This is more of a clerical error than anything else.

Chairperson Colling commented that a mistake was made and assumes a 50/50 split on the blame. Unfortunately the applicant built the shed before staff caught the error, so should he be penalized and be made to tear down the structure after he tried to get the information? Chair Colling does not think this is a fair or appropriate thing to do. The Board could rule against the applicant and he go to court, but Mr. Colling does not think that's the right way to go either. There is precedent enough here for the Board to solve the problem.

**MOTION** by Koluch, seconded by Duistermars, in the matter of File No. 12-004, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 169.9 square feet, at 3488 Hazelton, Parcel Identification No. 15-34-176-014, zoned R-4 (One Family Residential), be **APPROVED** because a practical difficulty does 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 maximum area for detached accessory buildings will unreasonably prevent the owner from using the property for a permitted purpose because of the acreage of the property, the age of the property, the fact that the home was built prior to the current ordinances and that there are multiple detached accessory structures in the area.

2. Granting the variance will do substantial justice to the applicant as well as nearby property owners by permitting a use or development of land that is consistent with prevailing patterns in the nearby area.

3. *A lesser variance will not provide substantial relief, as that is not possible without tearing down the shed, and would not be more consistent with justice to other property owners in the area.*

4. *There are unique circumstances of the property that necessitate granting the variance, and that distinguish the subject property from other properties with respect to compliance with the ordinance regulations. Specifically, the house was constructed with minimum storage space prior to the ordinance, and the applicant did make a good faith attempt to try to comply with the ordinance in that he did go to the Building Department, but the information he received may not have been correct. It was his belief that because the accessory structure was under 200 square feet, it would not be an issue and a permit was not necessary. Additionally, the accessory structure is built in the back of the house and is not visible from the street.*

5. *Alternatives do not exist that would allow the intended and/or reasonable use of the property that would allow the requirements of the ordinance to be met, as the applicant only has the choice to either remove the structure or leave it in place.*

6. *This variance is necessary for the preservation and enjoyment of a substantial property right possessed by any other property owner in the same zone or vicinity. Not granting this variance would cause undue hardship in having to tear down the structure based upon information received from the City indicating the structure could be built.*

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.*

Condition:

1. *The addition to the garage structure shall be inspected for compliance with applicable building code regulations and any deficiencies, if found, shall be corrected.*

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

**Aye** 6 - Brnabic, Colling, Duistermars, Kochenderfer, Koluch and Verschueren

**Absent** 1 - McGunn

2012-0113

**PUBLIC HEARING - FILE NO. 12-003**

Location: 2666 Leach Rd., located on the west side of Leach, north of Auburn Rd., Parcel Identification Number 15-30-451-013, Zoned I, Industrial.

Request: A variance of five feet from Section 138-10.102B (Detached Accessory Structures) of the Code of Ordinances, which states that a detached

structure accessory to a residential building shall be located no closer than five feet to any side or rear lot line. The existing garage was cited by Ordinance Enforcement as being closer than five feet to the side property line.

Applicant: Tracy Parker  
2666 Leach Rd.  
Rochester Hills, MI 48309

*(Reference: Staff Report, prepared by James Breuckman, dated April 4, 2012 and associated documentation has been placed on file in the Planning and Economic Development Department and by reference became part of the record thereof.)*

*Chairperson Colling read the request for the record, and invited the applicant to come forward to the presenter's table, state his name and address for the record, and provide a brief summary of the request. Mr. Colling questioned staff as to why the Board is looking at a residential ordinance with regard to an industrial zoned parcel. Mr. Breuckman explained the ordinance does not regulate, in this case, by zoning district - it regulates by use. This is a residential property located in an industrial zone. The specific ordinance language referring to detached accessory structures, states "accessory to a residential building or use".*

*The applicant, Mr. Tracy Parker, 2666 Leach Road, Rochester Hills, MI 48309, came forward and summarized his request. He explained that in 2004 he had an existing shed on his property. He came to the City because he wanted to make it larger. The City went back into the file and found where the shed was surveyed. Mr. Parker located the pins where the shed was surveyed. He stretched a string along the property line. The property line ended up being incorrect, because the survey stakes were wrong. Prior to that, the shed that was there was on the same exact concrete slab and had been there for 30 years. So all Mr. Parker did was take down that shed and put up another one a little bit bigger than the one that was there.*

*Chairperson Colling asked if the existing lot line where the new shed was built was the same - i.e., the side of the structure toward the lot line that was in error because of the stakes - was it in the same place as the old shed? Mr. Parker said he didn't move the concrete slab - he built the new shed in the same spot adding a little to the north end of the shed. This does not affect the property line. Mr. Parker added if he would have known he had to have the property surveyed at that time, he would have had it done himself. A survey done last January puts the applicant 13 inches from the property line.*

*Chairperson Colling called for an explanation of the staff report.*

*Mr. Breuckman summarized - we do have a situation where the building was built approximately one foot from the property line. He notes that many properties along Leach Road have detached buildings, and that aerial photographs indicate that the detached accessory buildings likely have less than five foot side yard setbacks. The word "likely" is used because there is an inherent difficulty in interpreting aerial photographs with lot lines because there is a built-in margin of error with the location of lot lines on the GIS system. There*

is a timeline of events in the summary section of the staff report that explains how the situation evolved. The last paragraph in the staff report is important because it explains that once a building is located closer than five or three feet to a property line, different construction requirements come into play. Mr. Breuckman went through the case analysis. Compliance with the strict letter of the restrictions governing setback would require the garage to be relocated four feet to the north. There is room on the property to move the structure notwithstanding the cost to pour new foundations and move the structure. In terms of substantial justice or granting a special benefit - this would not create a unique situation along Leach Road as detached structures exist with setbacks less than five feet. We can't say with any degree of accuracy if there are any that have one foot side yard setbacks, but there are many detached structures in the area that do not comply with setback requirements. In terms of granting a lesser variance, it would not grant substantial relief because the applicant would still have to move the structure. There are no unique circumstances of the property itself. In terms of the problem being self-created; the applicant erected the garage and this can be considered self-created. The consideration of locating the accurate property lines on this site is another issue. Granting the requested variance would allow for a detached accessory structure with a one foot side yard setback, and so consideration of the variance must take into account the potential for the variance to spur similar requests on surrounding properties. Mr. Breuckman indicated he will answer any questions.

Chairperson Colling opened the Public Hearing at 8:04 p.m.

A telephone call was received March 27, 2012 from Mr. Mark Cushman, 2678 Leach Road, indicating his opposition to granting the variance.

**Ms. Leah Allen, 2666 Leach Road, Rochester Hills, MI 48309** came forward and indicated the hardship in this case is that a requirement to move the garage would be extremely expensive and an enormous job. She asked the Board take this into consideration as well.

**Rev. Mark Cushman, 3188 Willet, Rochester Hills, MI 48309** came forward and established he was the individual who filed a complaint in this case. He indicated he was putting up a fence at 2678 Leach in 2005 or 2006 when Mr. Parker stated the fence was on his property. Rev. Cushman had a survey done to make sure where the fence was being installed would not be violating the property line. In the meantime, boulders and outdoor equipment were parked on his property. Brush was also placed on his property. He asked Mr. Parker to remove these items. After the survey was done it was discovered that Mr. Parker's shed was not in compliance and, in fact, the overhangs on the shed come eight inches over the property line. Rev. Cushman showed photographs of the encroachment. The church bought the property in the early 1980's for expansion, and if the shed next door hangs over the property line and is decreasing the property value, Rev. Cushman has a problem with it. There has been no communication about what can be done to rectify the issue.

Chairperson Colling commented the only issue relevant to this case is that the shed overhang is over the property line.

*Rev. Cushman provided a photograph showing the overhang to the lot line. There is a string hung between the survey posts showing the property line and how much the shed overhang is beyond the lot line.*

*Chairperson Colling closed the Public Hearing at 8:13 p.m. and turned the meeting over to the Board for discussion.*

*Ms. Brnabic asked for clarification - at the time of the application, back in 2004, there was no City requirement to submit a survey of the property along with the drawings or plans that were submitted for the garage?*

*Mr. Hollis confirmed there is no requirement for a certified survey from a civil engineer. The applicant did provide the Building Department with a plot plan that he drew with incorrect dimensions.*

*Ms. Brnabic noted the applicant stated that he had drawn the plot plan with the 7.5 feet as the setback based on where the prior survey stakes were located. When were these survey stakes placed?*

*Mr. Parker responded the stakes were placed in 1993. He measured from the existing stakes. They are concrete stakes with an orange tab on top of them.*

*Chairperson Colling wants some chronology - he is hearing from the applicant that there is a garage on that exact concrete slab, based upon the lot line that he is claiming he measured from, that was in error for 30 years. For 30 years there was an incorrect lot line. Staff and City never questioned this at any time, and there was never any dispute until recently. For all practical intents and purposes, when this new structure permit was granted, was the City satisfied that the dimensions given based upon the existing building, were going to be on the same lot line as the old one to be replaced?*

*Mr. Hollis indicated he does not know if the new building is exactly in the same location as the old one.*

*Chairperson Colling said the applicant has stated the garage is on the existing slab, and the plans that were submitted for approval showed an existing slab.*

*Mr. Hollis doesn't think the plans that were submitted to him showed an existing slab. He did not complete the actual review, but based on the documents that he has, there is nothing on the plot plan that shows there was an existing slab.*

*Chairperson Colling is trying to establish how long this has been assumed to have been the correct lot line for the subject lot. Mr. Hollis does not have an answer for that.*

*Mr. Verschueren referred to the photographs submitted by Rev. Cushman, and asked who put the property lines on the photograph, the applicant, the neighbor or the City? The City should know if that is the correct lot line.*

*Chairperson Colling explained the photograph submitted by Rev. Cushman was after he paid to have a survey done to determine the lot line. The applicant's*

*plan for the structure was based upon an existing building, which it is assumed was torn down and rebuilt upon the site, based upon a stake that was in error for a garage that existed for 30 years prior to being torn down.*

*For the record, Mr. Parker indicated he paid to have a survey done in January 2012.*

*Chairperson Colling asked the applicant if the stakes shown in Rev. Cushman's photograph are in the correct position based upon the January 2012 survey? Mr. Parker responded yes.*

*Mr. Koluch asked the applicant if the 1993 survey was the one he indicated later down the road, a surveyor told him it incorrect. Mr. Parker replied yes. Mr. Koluch then asked if the monument markers ever moved between the two surveys or is there a legal description where it was measured wrong? He doesn't understand how it would be incorrect from one survey to another. Mr. Parker explained the survey company he hired measured from Auburn Road, and that they had indicated the earlier survey was not correct. Mr. Koluch commented there is a note on the 1993 survey that states "wrong - never was there in 1993" (pointing at the shed), but if the structure had been there for 30 years, it must have been there in 1993.*

*Chairperson Colling asked Mr. Parker if he has any documented proof that the shed has been in place for 30 years.*

*Mr. Parker said his family has been in the house since 1932. He does not know when the original shed was built.*

*Mr. Kochenderfer is trying to understand the disparity between the 7.5 feet on the permit and reality. That's a pretty big number we're talking about. There have been several inspections on the structure, but no final inspection. He asked if the City would have had any readily available information that it would have been able to figure out what the true number was during those inspections.*

*Mr. Hollis replied that the City does not require an official site plan for a detached structure such like was built. He explained that if he goes out to a site and there's something that looks like it's questionable, the City may ask for an official survey at that time. But if you look at the site based on the aerial photographs, the existing property line actually runs down the middle of the applicant's driveway, so if you assume that their driveway is on their property and looked down the property line, it doesn't look like there is a question of the distance.*

*Ms. Brnabic commented that if there had been an existing shed built 30 years ago in that location, that at this point in time today it would matter, because years ago in older areas certain structures were permitted under the previous ordinances. A new structure was built and that's what makes it different.*

*What Chairperson Colling is trying to establish is that even though the structures weren't necessarily in conformance with code, the assumed lot line for this structure has been in error for quite some time. What this is coming*

down to for Mr. Colling is that we have a situation where a lot line was assumed to have been correct, the permits were granted as a result of that, the structure was built, and it was only after the structure was completed are we finding out that the lot lines are in error.

Ms. Brnabic asked Mr. Parker if the 1993 survey was requested or paid for by him. The applicant responded no, he received a copy of the survey from the City. Ms. Brnabic then commented that the applicant was relying on information that wasn't requested or paid for by him, so he made an assumption, and because it wasn't a requirement of the City that a survey be submitted when you build a structure, the assumption was made that the information submitted on the plot plan by the property owner was correct to the best of the owner's knowledge.

Chairperson Colling pointed out that on the 1993 survey, the client was the church next door to the applicant, so the church paid for the survey and survey was in error; the lot line was established at that time. The applicant went to the City using a survey that was paid for by the church in 1993 to establish the lot line, because this survey was already on file with the City. The point being that the survey was paid for in 1993 by the other property owner, and now we have a situation where we've got two surveys in conflict; and the Board really doesn't know what the answer is. It's not known if either survey is correct.

**Ms. Leah Allen**, address previously given, came up to explain the garage has been there since 2004, and it hasn't been an issue with the Community Church. The issue is coming down to the brush on the church's property that came from Rev. Cushman's house on Willet. Ms. Allen feels this is being vindictive of the church, when both property owners were getting along fine until the end of last year.

Chairperson Colling clarified that the Board can't take into account any conflict between the applicant and the neighbors. Chairperson Colling then asked why is this case before the Board tonight when the garage was built in 2004? Is it because of a complaint from the church about being too close to the lot line? How did this violation come to the City's notice?

Mr. Hollis confirmed it was a complaint from the church. The survey that has the church's name on it was not in the City files when the application was made for the building permit. The date the survey was received in the Building Department is November 10, 2011.

Chairperson Colling verified with staff that the church is the client that started the survey in 1993; Mr. Hollis agreed. Mr. Colling stated this is the survey with the incorrect lot line that was measured off of for this garage that was built in 2004. Based upon the 1993 survey, the garage is five feet off the lot line. If it's an error in the 1993 survey, we have a problem. His question has not been answered - what is the state of the 1993 survey with regard to the lot line?

Mr. Hollis replied that 30 years ago there was not the equipment they have today to properly locate property lines. The permit was granted based on the information provided by the applicant, which is apparently incorrect based on the

survey we have now.

Chair Colling continued. The applicant has stated he used the survey to determine the lot line to where the garage was placed and that the permit stated that he was building on the existing concrete structure. Now if the applicant built on the existing concrete structure for the new garage, that concrete was there in 2004. He may have added to it on the north side, but the concrete was there.

Mr. Hollis commented he does not believe the garage was built on the existing concrete because the original complaint that was responded to by Mr. Sage, Ordinance Inspector of the Building Department, was that there were footings being put in without a permit.

Chairperson Colling pointed out the applicant said he increased the size, but not the portion along the lot line in question.

Mr. Hollis said if the applicant is saying he built the garage based on the 1993 survey, the survey shows that the shed was already on the property line, not five feet off the line. The most recent complaint about the shed being on or over the property line was received on January 3, 2012.

Chairperson Colling confirmed with staff the permits to build the new structure were taken out in 2004, and asked if all approvals at that point in time were given by the City - if everything had passed inspection. Mr. Hollis replied no. Mr. Colling asked what needed to be remediated and commented that an occupancy permit is not granted until final inspection is approved, so this makes the structure illegal. Mr. Hollis indicated the City never passed a final inspection - there were several items that were still outstanding. The last inspection was made March 22, 2005, and there were three issues at that time - the header was not properly installed over the service door, a header was required above the rear door and all the anchor bolts had to be exposed for inspection and must be 1/2 inch diameter minimum. Chairperson Colling asked why, seven years later, the City has not done anything about this? Mr. Hollis explained the applicant never requested another inspection. Mr. Colling finds it incredible that the City knew there were problems and would let it go seven years without a follow-up. It's not always up to the applicant to request an inspection -- it's up to the building enforcement officers to see that time has elapsed and go forth and do something. Mr. Colling feels the applicant should have called for a final inspection when everything was completed, and finds the City at fault for not following through. Mr. Hollis explained the general procedure is to wait for the property owner to call for a re-inspection as the City does not know when the outstanding issues have been taken care of.

Mr. Kochenderfer indicated in the future, the City should follow up on these final inspection situations as there may be safety issues involved and the building could be illegally occupied to the detriment of the property owner and/or the neighbors. Chairperson Colling added there is also an issue of de facto acceptance.

Chairperson Colling feels it would behoove the City to have a property inspection done by a certified professional to fully establish the lot lines in this

case, and bring this information back to the Board. Mr. Colling wants a notarized, certified survey completed at the City's expense to determine the lot lines between these two properties so that the Board can have a starting place that is accurate. Mr. Colling also requested that staff record all history on these two properties, especially regarding construction of the existing garage. He also asked that a final inspection be conducted on the garage to determine compliance. When this comes back to the May meeting, Chairperson Colling wants answers from staff - and he expects facts.

Mr. Hollis indicated he is not quite clear what the Board is asking for as far as a certified survey, when staff already has a sealed certified survey.

Chairperson Colling clarified he wants a survey done at the City's expense because right now, he doesn't believe either of the surveys on file. If the new survey corroborates the newer one on file, fine. Right now there are two separate surveys from two separate professional organizations with notarized State of Michigan seals on them - they both can't be right and they both can't be wrong. Mr. Colling added he wants staff to take measurements based upon the lot line as to where the building truly sits, and wants staff to complete the final inspection on this building. The Chair stated he does not have enough information to decide this case.

**MOTION** by Verschueren, seconded by Brnabic, in the matter of File No. 12-003, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to reduce the side yard setback requirement by 4 feet, Parcel Identification Number 15-30-451-013, Zoned I (Industrial), be **POSTPONED** until the May meeting or for a maximum of 60 days if the information can not be provided in time for the May meeting.

Ms. Brnabic asked if there was anything on record about the prior inspections of the subject garage that has not been provided to the Board. Mr. Hollis replied not to his knowledge. Ms. Brnabic then asked what fire and safety issues are involved given the current location of the garage. Mr. Hollis explained that assuming the latest survey is correct, there are several things that the Michigan residential code require. The staff report lists the code requirements that have to be met when a structure is less than 3 feet to the property - including fire rating the exterior walls and eave projections. The structure currently does not meet these conditions, and if the variance is granted the structure will have to be upgraded to meet these conditions.

Chairperson Colling is disappointed that he doesn't have anything to hang his hat on as to where this structure really exists today other than photographs provided by the applicant and the neighbor that depict where they think the structure is located. Another issue is that the structure was built in 2004 and hasn't had a final inspection completed, and the Commission does not know the status of this inspection. Mr. Colling commented that irrespective of the structure's closeness to the property line, the eaves of the garage definitely hang over the property line based upon the photos submitted. The location of the lot line and the garage's respective positioning upon it, and if the eaves are actually over the property line, have a very distinct bearing on this case. Mr.

*Colling relies on staff to bring incontrovertible facts, and he feels like he doesn't have this today. How can we grant a variance for an architectural projection that hangs over another's property? Mr. Breuckman confirmed granting a variance to allow this could not be done.*

**A motion was made by Verschueren, seconded by Brnabic, that this matter be Postponed. The motion carried by the following vote:**

**Aye** 6 - Brnabic, Colling, Duistermars, Kochenderfer, Koluch and Verschueren

**Absent** 1 - McGunn

## **ANY OTHER BUSINESS**

### Election of Officers

*Chairperson Colling opened the floor for nominations.*

**MOTION** by Verschueren to nominate Mr. Colling as Chairperson. Mr. Colling accepted the nomination.

**MOTION** by Duistermars to close nominations and appoint Mr. Colling as Chairperson.

Ayes: All Nays: None

**MOTION CARRIED.**

**MOTION** by Colling to nominate Mr. Verschueren as Vice-Chairperson. Mr. Verschueren accepted the nomination.

**MOTION** by Duistermars to close nominations and appoint Mr. Verschueren as Vice-Chairperson.

Ayes: All Nays: None

**MOTION CARRIED.**

*Vice-Chairperson Verschueren moved to retain the Planning and Economic Development Department Staff as Secretary.*

**MOTION** by Duistermars to close nominations and appoint City Staff as Secretary.

Ayes: All Nays: None

**MOTION CARRIED.**

*There was no further business to come before the Board.*

## **NEXT MEETING DATE**

*Chairperson Colling reminded the members the next Regular Meeting is scheduled for May 9, 2012.*

## **ADJOURNMENT**

*Hearing no further business, Chairperson Colling adjourned the meeting at 8:55 p.m.*

---

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

---

*Sandi DiSipio, Recording Secretary*