



Rochester Hills

Minutes

Zoning Board of Appeals

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Rochester Hills, MI
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Home Page:
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Chairperson Ernest Colling, Jr., Vice Chairperson Gerard Verschueren
Members: J. Martin Brennan, Deborah Brnabic, Jim Duistermars,
Kenneth Koluch, Michael McGunn

Wednesday, July 13, 2011

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 6 - Jim Duistermars, Deborah Brnabic, Gerard Verschueren, J. Martin Brennan, Ernest Colling and Michael McGunn

Absent 1 - Kenneth Koluch

Also Present: James Breuckman, Manager of Planning
Scott Cope, Director, Building Department
Sandi DiSipio, Recording Secretary

APPROVAL OF MINUTES

2011-0312 March 9, 2011 Regular Meeting Minutes

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

Aye 6 - Duistermars, Brnabic, Verschueren, Brennan, Colling and McGunn

Absent 1 - Koluch

COMMUNICATIONS

Planning & Zoning News, February - June 2011 editions

PUBLIC COMMENT

No members of the audience came forward with any comments on non-agenda items.

NEW BUSINESS

2011-0313 PUBLIC HEARING - FILE NO. 11-006

Location: 3421 Devondale Road, located on the east side of Devondale Road, south of Auburn Road, Parcel Identification Number 15-32-202-040, zoned R-4, One Family Residential.

Request: A request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Code of Ordinances, which states that in no instance shall the combined floor area of all detached accessory structures located on a lot exceed the ground floor living area of the main building or 720 square feet, whichever is less. The ground floor living area of the main building is 1,117 square feet, so the maximum permitted area for all accessory structures on the lot is 720 square feet. The submitted application for a proposed detached garage indicates a total size of 1,920 square feet, requiring a variance of 1,200 square feet.

Applicant: Dennis Berryman
3421 Devondale
Rochester Hills, MI 48309

Chairperson Colling read the request into the record, and asked the applicant to come forward, introduce himself and explain his variance request.

Mr. Dennis Berryman, 3421 Devondale, the applicant and property owner came forward and stated his case. He explained he has lived in the City since 1970, and in the subject home for 31 years. The proposed garage is a replacement of two buildings and a canopy currently existing on the property, to give a better look to the yard and to house the applicant's collection of cars. New landscaping is also proposed to improve the look of the yard. Mr. Berryman indicated the home has been remodeled and additions have been completed since he's lived there. The applicant stated there are a lot of car enthusiasts in the area, and it takes more than a normal two-car garage to house them. Mr. Berryman explained his property is 750 feet deep and a garage could be placed anywhere within this space. The garage is proposed 144 feet from the rear of the existing house. The height of the proposed garage will be the same as the existing garage. The existing garage is too low, the garage door can't be replaced with a new style door, is very outdated and needs to be replaced. The new garage would match the exterior of the existing house and have a paved cement driveway all the way back.

Chairperson Colling asked if there are any extenuating circumstances or difficulties associated with the property that would justify granting the variance.

Mr. Berryman stated that without this variance it makes it hard to house the vehicles with a clean look. He indicated he has a lot of property that is basically useless if he can't have what he'd like there. Mr. Berryman has two letters from his neighbors indicating they have no objections to granting the variance and would like to see a new building built. Copies of these letters were given to the Board. Mr. Berryman also provided and explained photographs of his property to the members.

Chairperson Colling then asked what the tent structure in the yard is used for. Mr. Berryman explained that his enclosed trailer is inside the tent. The 1996 trailer needs to be sheltered from the weather or it will not last long. This tent

structure will be removed. The trailer will fit inside the proposed new garage.

Mr. Berryman then explained the storage shed that houses a farm tractor, lawn tractor and other lawn tools is scheduled to be removed. The existing garage would also be removed, and the driveway would be continued back to the new garage. Mr. Berryman agreed there are no extenuating circumstances or difficulties other than his desire to have larger structure and to be more presentable to the neighborhood.

Chairperson Colling read the two letters provided by the applicant from his neighbors stating no objections to granting the variance; one from Leslie Lefavre, 3428 Devondale, and the other from Brian Ridenour, 3433 Devondale (said letters become part of the record).

Mr. Berryman commented he has noticed numerous structures of comparable size in the City, notably a new structure at 2131 Livernois and a 26' x 50' attached garage down his street. He is asking to remove what exists. The current garage is approximately 756 square feet and the storage shed is 300 square feet.

Mr. Scott Cope, Director of the Building Department, summarized the staff report. Staff reviewed the application and determined the structure to be 1,200 square feet over what is allowed by the ordinance. There is a limit of 720 square feet for accessory structures. This proposed structure exceeds both the living area of the home (1,117 square feet) and the allowable area by the square footage.

Chairperson Colling pointed out that the existing structures on the lot today total approximately 1,056 square feet. Mr. Cope explained that the plot plan submitted for review did not include the shed structure. Based on the age of the property, Mr. Cope presumes the structures pre-date the ordinance and are therefore non-conforming compliant.

The Chairperson declared the public hearing open at 7:22 p.m., calling for proponents and/or opponents who wished to speak.

A telephone call was received by the City on 6/28/11 from Alan Brennecke and Virginia Abbott, 2477 Winding Brook Circle, voicing opposition to granting the requested variance.

A telephone call was received by the City on 6/29/11 from Terry Cross, 3624 Winding Brook Circle, voicing opposition to granting the requested variance.

A telephone call was received by the City on 7/1/11 from Richard Walker, 3362 Grant Rd., voicing opposition to granting the requested variance.

A telephone call was received by the City on 7/11/11 from Pauline Baldwin, 3640 Winding Brook Circle, voicing opposition to granting the requested variance. Also received from Pauline and Scott Baldwin was a letter that the Chairperson read into the record opposing granting the variance (said letter becomes part of the record).

Susan Pennell, 3636 Winding Brook Circle, indicated she is not concerned so much about the size of the garage, only about the noise factor when you work on cars, etc.

Joanne Wisniewski, 3558 Winding Brook Circle, said her only concern is the noise factor and asked if the property is sold what the garage could be used for.

David Brockman, 3573 Winding Brook Circle, President of the Homeowners Association for Sanctuary of the Hills, commented the City is very keen on the appearance of subdivisions. A lot of effort goes into maintaining the appearance of the Sanctuary. To have a new structure be built on the side of their property which will affect sight lines for many property owners is a concern. This variance request is a significant one, and he asked if the height will be any higher than what currently exists on the property.

Anthony Wisniewski, 3558 Winding Brook Circle, feels the proposed structure will further diminish property values in the area. The building looks commercial and it's twice the size of the existing home.

Virginia Abbott, 2477 Winding Brook Ct., said the building is way out of proportion with anything else in the neighborhood and asked what the owner plans to do with the structure. She is concerned with future property owners and what they could do in the building. Granting this variance sets a major precedent.

Linda Macklin, 2473 Winding Brook Ct., stated she understands the request and the property owner seems reasonable, but feels the laws and regulations were put in place to protect the surrounding property owners as well. With property values down, she is worried about resale and how this garage will look.

There being no further comments, the Chairperson declared the public hearing closed at 7:30 p.m.

Chairperson Colling commented that as far as property rights, he understands where the people in opposition are coming from, but like any property owner, the applicant making the request has the right to use his property in any manner he chooses provided he conforms with all ordinances. We can't dictate to him what he can and can't do with the garage. We can see to it that he understands the ordinances and builds according to what is allowed. As the property is 58 feet wide by 750 feet deep, Mr. Colling asked what the building envelope is on the lot.

Mr. Cope indicated the buildable area would be 10 feet from the sides, 25 feet from the front and 5 feet from the rear (for accessory structures) - so the building envelope on this lot is quite substantial.

Chairperson Colling asked if any variances would be required if the proposed garage was attached to the residence, not an accessory structure and all other currently existing structures were removed. Mr. Cope stated the main purpose of a property is based on the home and the size of the home. When an attached garage exceeds the size of the home, then the principal use of that

property would appear to be a storage use and not a single family residential use. So it is questionable whether or not that would be allowed.

Chairperson Colling explained he is trying to determine if this applicant can revise his plans, remove some of the accessory structures and make an aesthetic building in the allowable envelope of the property for the size of the structure he is proposing. There is a large building envelope contained on the property and the applicant does have other options. Mr. Cope stated this is a matter of interpretation of that section of the ordinance - that the principal use of the property is a single family residential use. The way this has been looked at in the past is if an attached garage is larger than the principal structure, then there is a question about what the principal use of that property is. In this case, it would be more of a storage area than a single family structure, so that would not be allowed. This is subject to interpretation by this Board.

Mr. Breuckman added that the definition of accessory building is part of what staff would rely upon. The definition states: "and is further intended to be used in a manner that is clearly incidental to, customarily found in connection with, subordinate to, and located on the same zoning lot as the principal use to which it's exclusively located".

Chairperson Colling understands this, but is asking about the building envelope of the lot and what was allowed under ordinance. Mr. Colling's interpretation is that the applicant could clear out any accessory building that exceeds 720 square feet and still add on to the home within the building envelope. He could make the home bigger, he could add a second garage to the house, he can add on whatever he wants as long as it conforms to the ordinance. Mr. Cope agreed this is correct.

Chairperson Colling stated that the existing structures are grandfathered in because the buildings existed prior to the zoning ordinance. The applicant could leave everything alone and stay with the maximum allowed on the lot in terms of accessory structures. There are other options - to add on to the home and maybe not get exactly what is proposed, but create more storage and follow the letter of the law. The existing garage could remain on the property and a second garage could be attached to the home. Mr. Colling does not see any extenuating circumstances to allow a variance to consolidate non-conforming structures into a larger non-conforming structure. Other options are available that meet the ordinances.

Mr. Berryman agreed he could attach a garage to the home, but what he tried to do was to locate the proposed new garage toward the rear of the yard so it doesn't overwhelm anything.

Mr. Cope clarified that if the applicant were to attach the proposed detached structure to the house, he would also need to increase the size of the home so that the square footage of the house is larger than the attached garage. Then it would be within the ordinance requirements.

Mr. Brennan thanked the residents for coming to the meeting and expressing their opinions. The Board appreciates the input from the neighbors. Mr.

Brennan commented that this request is really unusual as the proposed garage and the variance request is huge; the Board has never granted a variance this large. The Board needs to have unusual circumstances or something unique with the land in order to grant variances. The garage is too incompatible with residential zoning. The applicant has alternative options in order to gain the garage he wants. Mr. Brennan is not in favor of granting this variance, but wants to work with the resident to find another way to allow him to have a garage.

Ms. Brnabic indicated she agrees with all the comments previously made and feels the proposed garage would be incompatible in that neighborhood as it is 800 square feet larger than the living area. Other alternatives exist.

Chairperson Colling summarized that the Board tries in all possible ways to give the benefit of the doubt to the homeowner because they have a substantial property right that the Board needs to allow; however, the zoning ordinances are such, the request is large and more importantly, there are other building options the applicant has. There is no justification to grant the requested variance.

MOTION by Duistermars, seconded by Verschueren, in the matter of File No. 11-006, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to allow a 1,200 square foot variance for a proposed detached garage at 3421 Devondale Road, Parcel Identification Number 15-32-202-040, 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 findings:

- 1. Compliance with the strict letter of the restrictions governing the maximum area for detached 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 will not do substantial justice to nearby property owners as it will allow a garage that is much larger than permitted by ordinance, and garages on nearby properties generally comply with ordinance maximums. Thus, the variance would confer a special benefit on the applicant that is not enjoyed by the 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 his desire to accommodate more storage on the property.*
- 5. Alternatives exist that would allow the intended and/or reasonable use of the property that would allow the requirements of the Ordinance to be met. Specifically, an accessory building limited to the size allowed by Ordinance can be built, or off-site storage could be secured.*
- 6. 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.

7. 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.

8. The granting of this variance would be materially detrimental to the public welfare or existing or future neighboring uses.

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

Aye 6 - Duistermars, Brnabic, Verschueren, Brennan, Colling and McGunn

Absent 1 - Koluch

2011-0314

ZONING ORDINANCE - Concrete/Steel Deck Interpretation/Discussion

Staff has prepared an explanatory memo and is requesting a discussion with the Zoning Board of Appeals regarding concrete decks and Zoning Ordinance language pertaining thereto.

Mr. Cope explained that Mr. Ed Anzek, Director of the Planning and Economic Development Department regrets he is unable to be here tonight. Mr. Cope introduced Mr. James Breuckman, the new Manager of the Planning Department who is present for the discussion. The item for discussion is related to concrete and steel decks. This Building Department looks at these decks as additions to the main structure. It came about in some discussions that perhaps an interpretation should be requested of whether or not the Building Department is looking at this issue correctly based on the ordinance. Concrete and steel decks in construction are more permanent in nature than a regular wood deck. They commonly have footings and usually have columns that have either stone or brick around them making them wider. Sometimes they include arches. As the Building Official, it is Mr. Cope's opinion that because of their appearance, concrete decks should be interpreted as an addition meeting the setback requirements of the primary structure. Mr. Cope explained the reason for this discussion is that there has been one structure built without permits that encroaches into the rear setback. Before proceeding to the ZBA with a variance request for that case, Mr. Cope would like to make sure that the Board and administration are all on the same page as far as the interpretation goes. Mr. Cope said he looked at this issue based on the intent of the ordinance and the impact the deck will have on the neighboring properties based on how the structure is built and the fact that it is a permanent construction with concrete footings. A wood deck is looked at as either attached or detached accessory structures requiring the five foot setback from the property lines. Mr. Cope asked for the Board's input.

Chairperson Colling remembers when this issue came up eight years ago he supported the decision to deny, but only because the structure that was built

had a projection of the roof out over the top of the deck. In that case, it was more than an architectural projection; it was an extension of the main structure. However, if an individual built a deck out of concrete and steel that had no projection of the roof over it, whether it was a roof for a walk-out or simply a deck off the back of the house, Mr. Colling would be more inclined to treat it as a deck; as it's just a choice of materials. Just because it's made of concrete and stone does not necessarily mean it is a structure. Mr. Colling does not think staff can dictate, without getting into the rights of homeowners, the choices of materials used in building a deck.

Mr. Duistermars asked what kind of stabilization is required for a wood deck. Mr. Cope explained that the posts are embedded in the ground, and sometimes there is a concrete pad 42 inches in the ground under the posts. Chairperson Colling commented that when you are building a concrete patio on the ground, you are required to put a rat wall under it, and that is a permanent footing. Mr. Duistermars then asked if concrete decks require footings all the way around the perimeter due to the weight of the deck. Mr. Cope clarified that steel columns are being used to support the steel beams, which can have 10 or 12 foot spans between them. Concrete is the most preferred material for decks in the larger homes being built.

Chairperson Colling feels there will be more concrete decks built in the future, and feels the answer here has to do with the structure itself. If it's a deck that provides a roof or a projection over a walk-out basement, as long as there is no roof of the house over the top of the structure that is built, it's a deck. Once you start putting the home in the form of a gable or a hip roof out over the top of the deck, then it becomes part of the house. Mr. Colling does not want the choice of materials to dictate what is defined as a deck.

Mr. Cope then brought up roof structures wherein the ordinance states that any roof structure that is open less than 50% and located within 10 feet of the principal building will comply with the setback requirements applicable to the principal building. The question now becomes if you have a concrete deck with an impervious surface, is this considered a roof on a walk-out situation.

Chair Colling does not believe so because the design is for a deck. Just because the rain does not leak through the flooring doesn't necessarily make it a roof. There is a difference between a deck and an addition to a home. Chair Colling is more concerned that the staff/ZBA doesn't qualify a situation based upon construction materials.

Mr. Cope explained he is interested in the Board's opinion on these issues because staff looks for ways to approve things, to allow people to use their property in whatever way they choose as long as it meets the requirements. Staff strives to interpret things in a manner that is reasonable and allows structures to be built.

Mr. Brennan believes that this issue warrants a study session and would like to see some photographs and examples of concrete decks and roof structures - of what is acceptable and what would be denied by staff. This would be helpful to understand what structures would and would not comply with the ordinance.

Ms. Brnabic agrees a visual presentation would be helpful and commented more discussion and an interpretation of awnings might also be warranted.

Mr. Colling asked the ordinance itself needs to be changed or if the interpretation is enough for staff to make their determinations. Mr. Cope feels the ordinance is open enough to interpretation either way regarding the concrete decks, but if it creates a question on a roof structure, maybe the ordinance needs to be redefined. Mr. Colling then asked how many requests come through the Building Department annually for awnings over decks and how many are denied. Mr. Cope indicated he does not see a lot of permit requests for awnings. Chair Colling indicated that roof structures could become a problem with multiple level decks.

Mr. Cope was asked to take photographs of concrete and steel decks, some over walk-out basements, concrete decks on flat property not over a walk-out basement but having first and second story decks, and an approved structure with a roof over it. Photographs of decks in violation of the ordinance should also be provided. A presentation and more discussion will take place at the next ZBA meeting.

This issue was discussed.

ANY OTHER BUSINESS

Election of Officers

Chairperson Colling opened the floor for nominations.

MOTION by Brnabic, supported by McGunn 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 Brennan, supported by McGunn 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.

Chairperson Colling 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.

NEXT MEETING DATE

Chairperson Colling reminded the Board that the next Regular Meeting is scheduled for August 10, 2011.

ADJOURNMENT

Hearing no further business, and upon motion by Verschueren, seconded by McGunn, Chairperson Colling adjourned the meeting at 7:55 p.m.

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

Sandi DiSipio, Recording Secretary