



Rochester Hills

Minutes

Zoning Board of Appeals

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

Chairperson Ernest Colling, Jr., Vice Chairperson Gerard Verschueren
Members: J. Martin Brennan, Deborah Brnabic,
Jim Duistermars, Michael McGunn, Bryan Monaghan

Wednesday, March 26, 2008

7:30 PM

1000 Rochester Hills Drive

MINUTES of the **ROCHESTER HILLS REGULAR ZONING BOARD OF APPEALS MEETING** held at the Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills, Oakland County, Michigan.

1. CALL TO ORDER

The meeting was called to order by Chairperson Colling at 7:30 PM.

2. ROLL CALL

Present 7 - **Jim Duistermars, Deborah Brnabic, Gerard Verschueren, J. Martin Brennan, Ernest Colling, Michael McGunn and Bryan Monaghan**

Others Present: Scott Cope, Director, Building Department
Jack Sage, Ordinance Enforcement, Building Department
Judy A. Biak, Recording Secretary

3. DETERMINATION OF A QUORUM

Chairperson Colling stated that a quorum was present.

4. APPROVAL OF MINUTES

4A. 2008-0135 February 27, 2008 Special Work Session Minutes

Chairperson Colling called for any comments or corrections to the February 27, 2008 Special Work Session Minutes. Upon hearing none, he called for a motion to approve.

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

Aye 7 - **Duistermars, Brnabic, Verschueren, Brennan, Colling, McGunn and Monaghan**

RESOLVED that the Minutes of the February 27, 2008 Special Zoning Board of Appeals Work Session be approved as presented.

5. ANNOUNCEMENTS/COMMUNICATIONS

- A. Notice of Cancellation of April 9, 2008 ZBA Meeting
- B. Planning & Zoning News, March 2008 Edition

Chairperson Colling stated that the April 9, 2008 Zoning Board of Appeals meeting had been cancelled, and the Board had received a copy of the March 2008 Edition of the *Planning & Zoning News*. He called for any other announcements or communications. No other announcements or communications were provided.

Chairperson Colling stated that the procedure for conducting Public Hearings was outlined on a flyer located in the rear of the auditorium. He stated that any and all evidence, and any documents or exhibits submitted during tonight's proceedings, would be included as part of the public record of the meeting. He reminded the Board and the audience that all questions should be directed to the Chair.

6. NEW BUSINESS

6A. 2008-0136 SIGN BOARD OF APPEALS PUBLIC HEARING - FILE NO. 06-013

Location: The northwest corner of a parcel of land located on the west side of Crooks Road, north of Avon Industrial Drive and south of Hamlin Road, adjacent to the parcel identified as Parcel Number 15-29-228-004, zoned B-3 (Shopping Center Business).

Request: Item #1: A request to allow one (1) off-premise real estate sign permit to be located in the right-of-way located immediately adjacent to Parcel Number 15-29-228-004, pursuant to Section 134-109(b) of the Code of Ordinances, to advertise the M-59-Crooks Business Park. The Business Park is located on the south side of Avon Industrial Drive, and consists of Parcel Numbers 15-29-276-005 through 15-29-276-010.

Item #2: A request to permit one (1) off-premises real estate sign pursuant to Section 134-115(a) of the Code of Ordinances, which prohibits the maintenance of any sign that is not an on-premises sign.

Item #3: A request to permit one (1) off-premises real estate sign to be located in a public right-of-way pursuant to Section 134-115(c) of the Code of Ordinances, which prohibits off-premises signs from being located in the public right-of-way.

Applicant: Avon Star, LLC
26100 American Drive, Suite 600
Southfield, Michigan 48034

Chairperson Colling noted for the record that the Board would now act as the Sign Board of Appeals.

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. Brett Everhart, Avon Star, LLC, 26100 American Drive, Suite 600, Southfield, Michigan, was present on behalf of the applicant. Chairperson Colling verified Mr. Everhart was representing the applicant and had full power to make decisions on the applicant's behalf with respect to the sign variance request before the Board. Mr. Everhart responded yes.

Chairperson Colling asked the applicant to provide a summary of his request.

Mr. Everhart stated he was present to request a variance for a real estate sign for the M-59/Crooks Business Park, which was located about a quarter of a mile west of Crooks Road on Avon Industrial Drive, and had no visibility from Crooks Road. He noted in the current real estate market, they had about a 35% vacancy rate, and were trying to obtain some additional exposure in the M-59 and Crooks area.

Mr. Everhart stated he was before the Board about fourteen (14) months ago, and was granted permission to install the same sign near the same location; however, the location was on the shopping center owner's property. He stated they had a lot of success when that sign was in place. Since that time, the shopping center transferred ownership. He noted that there had also been a monument sign located on the same parcel that said "Industrial Plex", but the City had requested that the monument sign be removed. He pointed out that now there were no signs there, and at the same time, the new shopping center owner requested they remove their sign. They were now asking to install their sign in the City's right-of-way.

Chairperson Colling asked Staff to provide a summary of the Staff Report.

Mr. Sage stated that Mr. Everhart's statements were correct. The Sign Board of Appeals granted a variance to allow the sign to be located on the Crooks Corners property back in August 2006. The sign was there through August 2007, and was not brought back to the Board, and was removed at the request of the new property owner for Crooks Corners. Mr. Sage explained that owner no longer wanted the sign on the property.

Mr. Sage explained the Industrial Plex sign had been in place for the better part of twenty-five (25) years and was in a dilapidated state. The owner of the property did not want to replace the sign, when the Building Department asked him to either

replace the sign or remove it from the property because of the unsafe conditions. That property owner decided to remove the sign as he intended to do some remodeling to that property.

Mr. Sage referred to the applicant's sign, and stated he had provided an aerial map of the subject corner, and described the oval on the aerial, which represented the Engineering Department's suggested location. (A copy of the aerial has been placed in the file and becomes a part of the record). Prior to any permit being issued by the Building Department for a sign in a public right-of-way, a permit must be issued by the City's Traffic Engineer to ensure it does not interfere with traffic or cause any unsafe driving conditions. He noted the location suggested by the Engineering Department was slightly more to the west than what the applicant initially proposed. He explained it was about 150 feet +/- from the driveway to the east down Avon Industrial Drive, which leads into the Crooks Corners shopping center.

Mr. Sage asked the Board to keep in mind that there were some limitations on the size of the sign in terms of what would otherwise be provided in the Ordinance. He explained the size was silent in the Ordinance, and the Board did not have to grant a 35 or 36 square foot sign, but the sign could be smaller. He noted the maximum height of the sign was seven feet by Ordinance.

Mr. Colling asked Mr. Sage to point out on the aerial where the sign had been previously located. Mr. Sage described a section of the parcel just to the northwest of the suggested location, where the sign was located, which was on private property.

Mr. Colling asked if Staff objected to the Board granting the maximum allowable under the Ordinance, or if there was visibility or another reason why the sign should be smaller. Mr. Sage stated the only concern was the consideration of the fact the sign was moving from private property to the public right-of-way. He stated the sign had to be placed in a location that was safe and approved by the Engineering Department. He explained the typical real estate sign for subdivisions was limited to 16 square feet; however, in the past the Board had granted a 35 square foot sign for the applicant's sign to be located on private property. He would leave the size to the discretion of the Board. He stated the Engineering Department was aware the sign was 35 or 36 square feet, and did not have any concerns with it.

Chairperson Colling opened the Public Hearing at 7:48 PM and asked if there was anyone who wished to speak on this matter. There being no persons wishing to speak, he closed the Public Hearing at 7:49 PM. He then called for discussion by the Board.

Mr. Monaghan asked if the applicant had seen the aerial provided by Mr. Sage, and asked if the applicant was agreeable to the location proposed by the City's Engineering Department.

Mr. Everhart stated he had seen the aerial, and at this point, they would be happy with any sign location they are granted. He indicated he had talked to Mr. Sage prior to the meeting, and agreed there was a lot of visibility in that location, and perhaps if they could angle the sign more towards Crooks Road so it was visible for traffic at that intersection. He stated they would have preferred to have it closer to where the old industrial plex sign was located, but at this point they would be happy with the proposed location.

Mr. Monaghan referred to the suggested location proposed by the Engineering Department and asked if that was for a sign directly facing the road, i.e. basically parallel to the road, or whether it would take another Engineering review if the applicant wanted to angle the sign in that location.

Mr. Sage stated the minimum setback from the curb would be ten feet, which he had discussed with the City's Traffic Engineer. He noted in considering the size of the sign, the applicant could install a V-shaped sign, as long as it was not wider than three feet at the back of the sign. If that impacted the size the Board might wish to grant, that could be taken in to consideration.

Chairperson Colling asked for an explanation of a V-shaped sign. Mr. Sage explained that the sign would basically look like the letter "A", but could not be any wider than three feet at the back, otherwise it would be considered two signs.

Chairperson Colling asked if the "v" would be pointing southbound. Mr. Sage stated the sign could be arranged in any fashion that would suit the applicant's needs.

Chairperson Colling stated that primarily if a v-shaped sign was installed, it would point to the south. Mr. Sage said one side could face towards Avon Industrial and the other side face north towards Crooks Road. He stated there were some alternatives as long as the sign was ten feet off the curb and within the location suggested by the Engineering Department that would be acceptable to the Engineering Department. He noted the Engineering Department had done a field check for the proposed location. He reminded the Board the sign would be contingent on the Engineering Department approving the sign and issuing a permit, which was the normal process for any sign located in the public right-of-way.

Chairperson Colling stated that as a member of the City's Advisory Traffic & Safety Board, he was aware that a sign installed in the proposed location would probably not impact traffic if the sign were parallel to Avon Industrial. He noted the businesses were located far enough away from the roadway and the driveways, so as not to impact traffic pulling out of the shopping center driveway.

Chairperson Colling stated from his perspective, he thought the Board had set a precedent for this particular business from the standpoint the Board had approved an off-premises sign when it was on private property. He noted the applicant had said the previous sign was successful and asked the applicant to define how the previous sign was successful and aided the business.

Mr. Everhart stated that intersection included an industrial complex on the east side of Crooks Road, and an industrial complex on the west side of Crooks Road. He noted the individual who owned the property on the east side of the street, pretty much owned the whole industrial area, and was able to put his signs out and his property was visible from the street. He stated the applicant's property was set back down Avon Industrial, and anyone looking in the area would see the other owner's signs, but would have no idea their complex even existed. Therefore, the traffic in the area or anyone looking to relocate to the area would see the applicant's sign. He commented he had driven past the area, and a new sign had been installed for the other complex.

Mr. Everhart stated if the applicant's sign was set back from Crooks Road, it would not be as visible. He referred to Mr. Sage's comment about the square footage of the sign, and asked the Board to take the size of the sign into consideration based on the proposed location. He commented a smaller sign would reduce visibility.

Chairperson Colling asked the applicant if he could attribute any leases, business, traffic or inquiries to the sign. Mr. Everhart responded absolutely. He explained when they did have the sign, they did get several new leases. He noted that one of their tenants' biggest complaints was that their customers were unable to find the complex, even if they are given directions. The sign helped people see the M-59/Crooks Business Park, even though the sign also listed space available.

Mr. Brennan asked why the previous owner revoked his permission for the sign. Mr. Everhart stated they had received a letter from the owner of the retail center that the ownership had transferred. It was his understanding that the new owner was trying to clean up the image and do an entire facelift on the shopping center, and asked them to remove the sign. He no longer wanted the sign located on that property. He stated they were even willing to fix up the existing industrial plex sign that the City wanted repaired at their expense, so at least the industrial plex sign would be there. That sign was not on their property and they needed the owner's permission to do that, and the property owner would not allow them to do that.

Mr. Brennan noted the advertised request was for three variances, and asked if all three were necessary. Chairperson Colling stated he was also curious about the three requests and the difference between them.

Mr. Sage explained there were separate, distinct Ordinances. He stated Section 134-109(b) prohibited signs in the public right-of-way; Section 134-115(a) is a condition that discussed location, and Section 134-115(c) referred to off-premises signs.

Chairperson Colling stated that Section 134-115(a) specifically referred to maintenance and Section 134-115(c) specifically prohibited off-premises signs from being located in the public right-of-way. He clarified that Section 134-115(c) prohibited signs in the public right-of-way. Mr. Sage responded that was correct.

Chairperson Colling asked about Section 134-115(a), which prohibited the maintenance of any sign, that is not an on-premises sign, and asked if this referred to the on-going maintenance of the sign. Mr. Sage responded that was correct.

Mr. Sage stated that Section 134-109(b) strictly prohibited any signs from being in the public right-of-way that is not authorized by the Mayor or the Board.

Chairperson Colling noted there appeared to be two Ordinances dealing with the public right-of-way, Sections 134-115(c) and 134-109(b).

Mr. Duistermars stated he understood Section 134-109(b) to be that any sign in the public right-of-way had to be approved by the City. Section 134-115(c) addressed the off-premise signs, which meant they were two distinct Ordinances.

Chairperson Colling stated that helped clear up the matter, noting it was not clear from the notice.

Mr. Verschueren referred to Section 134-115(a) that stated “maintenance” and thought that would pertain to signs that are damaged by the wind or other elements could not be put back up. He asked if the applicant’s sign was permitted, and there was a windstorm that knocked the sign down, if the applicant could still repair the sign and put it back up.

Mr. Sage explained that that use of the word “maintenance” in Section 134-115(a) meant “to keep” and did not necessarily mean maintain. He noted that there was a section in the Ordinance that required all signs to be maintained, but that was not what was being discussed at this meeting.

Mr. Verschueren stated there was also an Ordinance that discussed 75% damage to something could not be repaired. Mr. Sage stated that did not apply to signs. He stated the City did require that all signs be maintained, such as if they became defaced, dilapidated or destroyed by weather.

Mr. Verschueren pointed out the Ordinance stated the sign could not be maintained. Mr. Cope noted that was the reason the variance was being requested, so the applicant could maintain the sign at the proposed location.

Mr. Verschueren asked if the sign had to be as high and with that much area. Mr. Everhart responded that he thought the aerial photograph was a bit deceiving in that it made the area look much smaller than it actually was. He noted that when the sign was closer to the corner, he did not think the sign was overwhelming. Rather it was a pleasant looking sign that was noticeable for traffic in the intersection. He commented that if the sign were moved back an additional 150 feet, he would request that the sign remain as proposed.

Mr. Verschueren asked if the proposed sign was the same sign. Mr. Everhart stated the sign would be the same size as the sign they were granted back in August 2006. He explained they were having a new sign erected because the older sign had weathered.

Mr. Verschueren asked how much space was vacant in the applicant's complex. Mr. Everhart stated they currently had a 35% vacancy, out of about 140,000 square feet of property. He commented that several leases were coming due to expire over the next six months, and he was not aware of whether those leases would be renewed.

Mr. Verschueren asked how long the applicant would need the sign, whether it was one year or less. Mr. Everhart stated he would like to request at least one year at this time, with a review after one year so see what the status of the complex was at that time.

Mr. Verschueren stated the Board could include a condition in any motion granting the sign that would permit the sign for one year or less.

Mrs. Brnabic stated that due to the circumstances, she did not have any objections to the placement of the sign. She did question the necessity for having a 7-foot sign. She did not think the height was necessary, even if it was moved back, as it seemed a bit tall to her. She noted the applicant would be given the ability to put the sign in the right-of-way, which was against City Ordinance. She did not think that even vehicles in the intersection needed a 7-foot tall sign.

Chairperson Colling recollected that there was a down slope to the roadway in that area, i.e. that the geography ran downhill. Mr. Duistermars asked if Chairperson Colling meant from southbound to northbound. Chairperson Colling clarified from the corner of Crooks Road and Avon Industrial, heading westbound, the road ran downhill. He noted that created a situation where the roadway was higher than it was 150 feet further to the west. He stated the sign was also for traffic travelling down the road, not just those stopped at the light at the intersection. He pointed out

the City's Sign Ordinance allowed monument signs a height of 7-feet, and the applicant's proposed sign was within the Sign Ordinance specifications. He noted the Board was not being asked for a variance on the size, and as long as the sign did not impact visibility, he was not as concerned with the size of the sign, particularly if the City's Traffic Engineer did not feel the sign would become a hazard to public safety. He was not inclined to put a condition on the sign size.

Chairperson Colling stated the sign could be permitted for one year, with annual renewals authorized by the City's Building Department as required under the regulation of real estate signs. He pointed out the sign did not have to come back to the Board for yearly renewals, and if granted, the sign would follow standard approvals as any other real estate sign would follow.

Mr. Verschueren commented if the Board included a condition the sign had to come back to the Board for yearly renewals, the sign would have to come back before the Board each year.

Chairperson Colling stated the sign could follow the standard renewal procedures set forth in the Ordinance.

Mr. Sage stated that particular Section of the Ordinance pertained more to subdivision signs, and there was no exception specifically for non-subdivision off-premises signs.

Chairperson Colling stated the Ordinance referred to real estate signs, and essentially the Board would be allowing an off-premises real estate sign. He thought the sign should be handled as any other sign in the City was handled.

Mr. McGunn asked if the sign was to advertise vacancies, and once everything was leased 100%, the sign would come down. Mr. Everhart stated if the complex was leased 100%; however, the sign also served a dual purpose in advertising space available, but also advertises for a visitor coming to the complex because the sign stated M-59/Crooks Business Park. He noted at this point in time they were more concerned with getting prospective tenants to the building than customers for the tenants. He commented both were a concern, but if they were prioritized, it was getting additional tenants to the complex.

Chairperson Colling stated he saw two reasons for the sign. Although it was advertised as a real estate sign, that appeared to be only half the battle. The other half was the fact the competition across the street in another industrial park had a similar sign for identification and real estate purposes that was on that property owner's land and was permanent and provided an disadvantage to the applicant. He noted in the current economic climate, aside from the obvious benefit to leasing the property, there was also one of identification, which was a big problem with

businesses, especially ones so far back from the road. He expected the sign would be renewed once a year for some time because even at 100% occupancy, he would expect the applicant to come back for a sign for identification purposes. He thought in this particular case that had some merit, although there was not an Ordinance to address that situation. He noted the Board could go on the record stated they understood that, but the primary Ordinance the Board had to deal with in this case was the real estate sign.

Mr. Verschueren commented that once the complex was leased out, if the sign was still there, it became an advertising sign. If somebody rents in the complex, they will advertise their location. He noted if the sign was still there and the park was full, it would just be advertising the park. He did not think any City would grant signs just because someone liked to have the sign there.

Chairperson Colling stated the Board could treat this sign as an identification/monument sign if the City had such an ordinance for an industrial park. He thought the reality of the situation was in this type of business climate and in this particular type of industrial complex, he doubted the complex would ever have 100% occupancy. He pointed out the applicant had been before the Board two years ago with a slightly higher percentage of leases. He noted if the Board did research on the average business property lease rates in Michigan today, it was about 65% to 70%. He personally did not see a problem from the standpoint of identification.

Mr. Verschueren stated it would be up to the Board to decide how long the sign should be permitted. He commented he thought any condition should include the words "or less" because things might pick up and the complex would be fully leased.

Mr. Duistermars stated that any motion proposed by the Board would include a clause that the sign must meet all Ordinance requirements. He thought the Ordinance addressed when a real estate sign had to come down based on occupancy, which would be the ruling factor.

Chairperson Colling stated it was not so much occupancy, as it was the option to renew after one year. He noted it was not tied to a percentage, but came back every year for renewal.

Mr. Duistermars stated the Board should let that part of the Ordinance govern the sign.

Chairperson Colling called for any further discussion. Upon hearing no further discussion, he asked if the Board was prepared to make a motion.

Mr. Duistermars proposed the following motion for consideration:

MOTION in the matter of File No. 06-013, that a request for one off-premises real estate sign to be located in the public right-of-way of Avon Industrial Road, west of Crooks Road, pursuant to Section 134-109(b) (Item #1) of the Code of Ordinances, be **GRANTED** for the applicant, Avon Star, LLC, on behalf of GVA Strategis, with the following Findings and Conditions:

Findings:

1. A special condition or circumstance exists for this applicant in that the property the sign advertises (the M-59/Crooks Business Park) does not front upon a major thoroughfare and has no visibility at the intersection of Avon Industrial Drive and Crooks Road.
2. Strict application of the provisions of this chapter would deprive the applicant of property rights commonly enjoyed by other properties in the same district.
3. Substantial justice will be done by allowing this approval. This approval will not be contrary to the public purpose and the general intent of the Sign Ordinance. Specifically, the sign will not endanger the public in terms of location and will assist the public in finding the area, and minimize traffic problems in that particular location.

Conditions:

1. The approval is granted for the period of one (1) year from March 26, 2008. Annual renewals of this sign permit will be authorized by the City's Building Department as set forth in Section 134-147 (real estate signs) of Chapter 134 (Signs) of the City's Code of Ordinances.
2. The sign must meet all Ordinances and requirements specific for a temporary real estate development sign.
3. The sign will be specifically for GVA Strategis for the M-59/Crooks Road Business Park.
4. The sign will be no greater than 35 square feet, as depicted on the plans dated received February 27, 2008.
5. The sign is to be located in the public right-of-way substantially as shown on the aerial example provided by the City's Engineering Department submitted to the Board on March 26, 2008, and subject to the City Engineering Department's approval.

6. The location must conform to all applicable Ordinances and laws.

Chairperson Colling asked if there was a second to the proposed motion on the floor. Mr. McGunn stated he would second the proposed motion. Chairperson Colling called for discussion regarding the proposed motion on the floor.

Mr. Verschueren suggested that the motion be modified to include that the request for Items #1, #2 and #3 were included in the motion. Mr. Duistermars stated that the preamble of the motion should be amended to include variance requests Items #2 and #3. Mr. McGunn concurred.

Chairperson Colling referred to condition #5 and suggested the condition be modified to state that the sign is to be located in the public right-of-way as the Engineering Department determines. Mr. Duistermars stated that Condition #5 stated "located as shown on the aerial example provided by the City's Engineering Department dated March 26, 2008".

Mr. Colling stated the aerial did not show an exact location, just somewhere within that location. Mr. Sage suggested that Condition #5 include the phrase "subject to Engineering approval". Mr. Duistermars stated the condition would be modified to read subject to the City Engineering Department's approval.

Chairperson Colling clarified the motion maker and seconder agreed to the suggested revisions. Mr. Duistermars and Mr. McGunn stated they agreed with the proposed revisions.

Mr. McGunn referred to Condition #1, which stated annual renewals would be authorized by the City's Building Department, and asked if that meant the applicant would come before the Board each year. Mr. Sage stated not unless a specific condition was included that required the applicant to come back each year for renewal. He stated the Building Department would do automatic renewals unless the Board wanted to revisit the variance within a certain time limitation.

Chairperson Colling stated the Board could revise the condition that the sign variance request come back to the Board after a specified period of time, but he did not want the Board to see the request in one year. Mr. Duistermars stated he believed if the City's Building Department felt the Board needed to review the matter, it would be brought back. He clarified if the Board wanted the request to come back within a certain time period, that clause had to be added to the motion.

Mr. McGunn stated he just wanted to clarify the condition. Mr. Duistermars asked if the Board wanted to the sign variance request to come back after five years.

Mr. Brennan asked if the applicant came back to the Building Department after a year and the Building Department said the applicant could not have the sign any longer, would the applicant's recourse be to come back to the Board.

Mr. Sage stated that basically it was, but noted if the condition was worded to say "subject to automatic renewals by the Building Department" then that is how it would be handled. The Building Department would not have basis to deny it unless the Board only granted the sign for two years subject to renewals by the Sign Board of Appeals after that time, or if the Board wanted to see the request again in three years.

Chairperson Colling thought the Board should proceed by modifying Condition #1 so that the request is brought back to the Board every five years. He thought the Board needed to give the Building Department some latitude in this, and he thought they needed to see how it would work. At this point, the Building Department would have the ability to look at the sign on a yearly basis, and if the request is still coming back at the five year mark, then it should come back before the Board.

Mr. Verschueren suggested the condition read five years or at the request of the Building Department.

Chairperson Colling stated the Board could not grant a five-year variance, rather it had to come up for renewal on a yearly basis. He suggested the wording be left alone, and the following be added: "if the sign is still being renewed at the five year mark, it would come back before the Board".

Mr. Duistermars stated he was agreeable to that, and stated that condition #1 would be modified to read:

1. The approval is granted for the period of one (1) year from March 26, 2008. Annual renewals of this sign permit will be authorized by the City's Building Department as set forth in Section 134-147 (real estate signs) of Chapter 134 (Signs) of the City's Code of Ordinances. If the sign is still being renewed five years from March 26, 2008, a variance request must be brought back to the Sign Board of Appeals for review.

Mr. Duistermars commented there were other factors that might determine the sign coming down earlier. For this particular condition, after the fifth year, it would come back to the Board.

Chairperson Colling verified that both the motion maker and seconder agreed to the changes to the motion. Mr. Duistermars and Mr. McGunn both accepted the revisions.

Chairperson Colling called for any further discussion on the motion on the floor. Upon hearing none, he called for a roll call vote.

Complete Motion (as amended and voted):

A motion was made by Duistermars, seconded by McGunn, that this matter be Granted with findings and condtions. The motion CARRIED by the following vote:

Aye 7 - Duistermars, Brnabic, Verschueren, Brennan, Colling, McGunn and Monaghan

RESOLVED in the matter of File No. 06-013, that a request for one off-premises real estate sign to be located in the public right-of-way of Avon Industrial Road, west of Crooks Road, pursuant to Section 134-109(b) (Item #1); pursuant to Section 134-115(a) (Item #2), and pursuant to Section 134-115(c) (Item #3) of the Code of Ordinances, be **GRANTED** for the applicant, Avon Star, LLC, on behalf of GVA Strategis, with the following Findings and Conditions:

Findings:

1. A special condition or circumstance exists for this applicant in that the property the sign advertises (the M-59/Crooks Business Park) does not front upon a major thoroughfare and has no visibility at the intersection of Avon Industrial Drive and Crooks Road.
2. Strict application of the provisions of this chapter would deprive the applicant of property rights commonly enjoyed by other properties in the same district.
3. Substantial justice will be done by allowing this approval. This approval will not be contrary to the public purpose and the general intent of the Sign Ordinance. Specifically, the sign will not endanger the public in terms of location and will assist the public in finding the area, and minimize traffic problems in that particular location.

Conditions:

1. The approval is granted for the period of one (1) year from March 26, 2008. Annual renewals of this sign permit will be authorized by the City's Building Department as set forth in Section 134-147 (real estate signs) of Chapter 134 (Signs) of the City's Code of Ordinances. If the sign is still being renewed five years from March 26, 2008, a variance request must be brought back to the Sign Board of Appeals for review.
2. The sign must meet all Ordinances and requirements specific for a temporary real estate development sign.
3. The sign will be specifically for GVA Strategis for the M-59/Crooks Road Business Park.
4. The sign will be no greater than 35 square feet, as depicted on the plans dated received February 27, 2008.
5. The sign is to be located in the public right-of-way substantially as shown on the aerial example provided by the City's Engineering Department submitted to the Board on March

26, 2008, and subject to the City Engineering Department's approval.

6. The location must conform to all applicable Ordinances and laws.

2008-0136

Chairperson Colling advised the applicant his variance requests had been granted. He stated the applicant should consult with the City's Building Department. Mr. Everhart thanked the Board for their time and consideration.

Mr. Everhart asked if he could clarify one item. He asked when the sign variance request would have to come back before the Board. Mr. Verschueren stated the Building Department would tell the applicant when the request had to come back.

Mr. Everhart referred to the annual renewal and asked if he had to contact the City or whether the City would contact him. He was advised to work with the Building Department to make that determination. Mr. Sage stated the applicant would have to renew the permit annually, and after the fifth year it would come back before the Board.

This matter was Discussed

6B. 2008-0137

ZONING BOARD OF APPEALS PUBLIC HEARING - FILE NO. 05-045

Location: 3695 Cedar Brook, located north of South Boulevard, west of Crooks Road, Parcel Number 15-32-376-065, zoned R-4 (One Family Residential).

Request: A request for a variance of 11.6 feet from Chapter 138-1111 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum rear yard setback of 35 feet in the R-4 One Family Residential Zoning District. The submitted application to construct an addition at the above referenced address indicates a rear yard setback of 23.4 feet.

Applicant: John Damico
1717 Stutz
Troy, Michigan 48084

Chairperson Colling noted for the record that the Board would now act as the Zoning Board of Appeals.

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. John Damico, 3695 Cedar Brook, was present. He explained he resided at the

subject property, and the Troy address was his business address. Mr. Damico stated he appreciated the Board looking at his request, and as a builder in Michigan he appreciated the fact the Board was sensitive and aware of the current climate in Michigan. He explained he was one of the partners of the Hickory Ridge development on Livernois.

Mr. Damico stated his request for a variance was to build a deck, which he further defined as a brick and steel terrace. He noted the Building Department had defined the proposed terrace as an addition.

Mr. Damico stated his lot was extremely extraordinary and unique in many ways. First, it was one of only two walkouts in the 79 lots comprising Walnut Brook Estates, and it was one of very few lots that back up to a 64-acre nature preserve. He stated his lot was the smallest lot in the Walnut Brook Estates, which together, created the condition of why he was before the Board.

Mr. Damico stated that the size of his lot, and the fact his subdivision by-laws had a requirement for the size of his house, which pushed his house very close to the boundaries of the lot lines in order to meet the subdivision's square footage requirements. He explained when he found himself in this situation, he began working on a deck or a terrace that would look nice in his backyard, and that would also look nice to the neighbors and the area. He stated he originally drew a larger deck that was denied and that his subdivision association did not like.

Mr. Damico stated he then started working with his subdivision association and his two adjacent neighbors to determine what they would like and would be happy with. Subsequently, he softened and reduced the size of the deck, and added some landscaping which was not part of the request, but which was added to add privacy. In doing all those things, he was able to get a vote of confidence from his two adjacent neighbors that would be able to see the deck, and from the subdivision association.

Mr. Damico stated this situation was not self-created because he had a walkout and no way to add a deck because of the size of his lot. He noted the deck would not be a detriment to any public welfare or to the City of Rochester Hills. He stated he would be glad to answer the Board's questions.

Mr. Damico said that one of the criteria was that granting this variance would not be a precedent to support similar, unwarranted variances. He commented that given all the unique circumstances of his property, that being one of only two walkouts in the complex, having the smallest lot in the entire subdivision, and having a nature preserve back up to his property would be very hard to duplicate in the City on another piece of property requesting a similar variance.

Chairperson Colling opened the Public Hearing at 8:31 PM and asked if there was anyone who wished to speak on this matter. There being no persons wishing to speak, he closed the Public Hearing at 8:32 PM. He then called for discussion by the Board.

Mr. Cope stated he wanted to clarify one item. He noted the Staff Report indicated the Building Department looked at the approved as-builts from when the house was originally built and there was a discrepancy in the setback distance. The as-built actually reflects a 35.3-foot setback to the back of the house, and that is why the denial letter reflected an 11.2-foot variance request, rather than the 11.6 feet noticed.

Chairperson Colling asked if that had to do with the fact the rear yard setback was mis-measured originally. Mr. Cope explained that in new construction projects, the Building Department receives an as-built when the project is completed to get an actual measurement. The measurement provided was probably one that was originally estimated at the time the house was first submitted for construction, and the applicant may not have seen the as-built when he submitted the plot plan for the proposed deck or terrace.

Chairperson Colling noted the applicant had a walkout basement, and ignoring the upper story deck, asked if the applicant built a concrete patio with footings for the exact dimensions proposed for the deck, if there was anything in the Ordinance that precluded that. Mr. Cope stated that if he did not have a walkout and it was a patio on grade, the answer was no.

Chairperson Colling stated that the issue before them was the structure above it, and asked if that structure was being treated as a structure or an architectural projection or something else. Mr. Cope stated it was being treated as an addition. He referred to the definition of "building" which described "something with a roof over it and able to shelter people". He explained that was how the Building Department made their determination in this instance. He stated that was different from the applicant constructing a wood deck that was not a roof and allowed the water to go through, the Building Department would not have any requirements for setback.

Chairperson Colling asked if the applicant could change the flooring to allow water to go through. Mr. Cope stated that would take away the biggest concern of the Building Department. He stated the decision to call the project an addition was based on the fact that it had a flat roof over it. He noted the Building Department had made other determinations regarding patios that had an awning or a roof structure, it was an addition.

Chairperson Colling noted the comment about the roof having to allow water to pass through. He commented the applicant could not take the entire structure and make it porous on the floor; however, he could add steel grading at strategic points

to allow light, air and rain to pass through, still get the same aesthetic effect, and meet the conditions of not being a roof. He asked if that would be acceptable to the Building Department.

Mr. Cope guessed it was still a matter of interpretation. The biggest reason the Building Department called it an addition was the fact there was a roof over it. He referred to the elevation, and stated he thought it was substantially different from what the Building Department considered a deck with just posts. He noted the brick being proposed, and the intent of the Ordinance. He thought the structure had more "walls" than "columns" which would lead him to believe it was more like an addition than a deck structure.

Chairperson Colling stated he could also argue that also lent itself toward a Mediterranean-type of look, or a Greco/Roman type of look with the columns, arches and the stone. His point was that he did not have that much of an objection to the stonework itself. He personally would be more comfortable if instead of a poured concrete floor and steel-reinforcement, it actually had a wooden deck flooring with gaps in it. That would still give the applicant primarily what he wanted, as he would still have the same look and feel, it would just have a real deck flooring to it. If that was the case, he would be inclined to grant the request from the standpoint it was something that is not a permanent living space.

Mr. Duistermars asked if that was case, whether the Board would even have to grant a variance because the definition would have changed.

Chairperson Colling thought the Board would be making an interpretation at that point. He was a bit reluctant to grant a variance on this from the standpoint of only for the reason of the "solidness" of the construction. That was what separated it from an outdoor living space to a permanent structure. He commented the proposal was beautiful. He asked if there were any other Ordinances or restrictions that would be affected because the proposal abutted a nature area or wetlands. Mr. Cope responded no, not that the Building Department was aware of.

Mr. Duistermars recalled the back property line abutted a retention pond. Mr. Damico indicated that was correct. He explained there was a detention pond, a creek, a path, another creek and then there was the wooded wetlands. He noted there was quite a bit of area behind his lot.

Chairperson Colling asked the applicant if he would have any objection to modifying his plans with respect to the nature of the flooring for the project.

Mr. Damico responded probably not as long as he could maintain the elevation. He

pointed out the homeowners association had a very strong aversion to a two-story wood deck, which he could have obtained a permit for and built. He agreed that style would not be in keeping with the neighborhood and was not very attractive. He thought the point was well taken if he could maintain the elevation and perhaps layer it on top with wolmanized wood joists covered with a composite flooring, it would look the same.

Chairperson Colling stated he was talking about a wooden deck. He explained the applicant would have an actual deck flooring on the structure. The applicant could build it and support it however he wanted, and could be free-floating between the rigidness of the arches, but would actually have to have an exposed wood flooring because it had to allow light, air and water through it to qualify as a deck.

Mr. Damico clarified he was not disagreeing, but was pointing out there were new materials available - composites that looked like wood, and which lasted longer.

Mr. Duistermars stated he thought the idea was that the space underneath the main deck floor would create a problem if a livable space could be created with the use of a solid decking floor that kept out the elements and which a window and French door system could easily be installed in the archway entries, creating a livable space for a playroom or other use. He agreed that would be an addition. However, if there was something on the main deck floor that allowed the elements to pass through, the interpretation would be it was not an addition, but was a patio-type structure.

Chairperson Colling understood Staff's concern about height, and was also aware of the requirements of the Walnut Brook Estates and their homeowners association, and agreed they would not want a plain, wooden deck structure. He was inclined, because of the unique nature of this particular subdivision, to be a bit more lenient in his interpretation.

Mr. Brennan agreed with the Chair's comments. He thought it was a good analysis.

Mr. Verschueren asked what the applicant wanted to do with the space under the deck, whether it would become a living room or a den. He noted if the applicant revised his plans to include an open deck flooring, anything underneath would get wet.

Mr. Damico stated he had no intention of putting any living space under it, nor would his homeowners association permit it.

Mr. Verschueren asked the applicant if he minded changing his plans to include an open flooring.

Mr. Damico stated no, he had never thought about it and thought it was a great idea.

He thought it was a great idea to put in wood planks and allow the water, air and the elements pass through. He thought he would put some paver stones underneath and perhaps use the area for a small deck underneath with a barbeque. He noted it would provide some shade.

Mr. Duistermars asked if a variance was necessary if the applicant revised and resubmitted his plans.

Chairperson Colling asked if Staff wanted a motion of interpretation or if Staff agreed with the Board's assessment and would approve the project if the floor were more like a decking material.

Mr. Cope stated because the Building Department had had other decks of this type previously and the Building Department's interpretation had been consistent with them being considered additions, he would prefer an interpretation by the Board if it was the Board's desire to allow something like this.

Chairperson Colling stated it was the Board's desire to allow this and not require a variance in this case because of the unique circumstances; however, if Mr. Cope preferred the Board grant a variance with conditions so it could not be easily repeated, the Board would do so.

Mr. Cope stated he would prefer the variance because it would help the Building Department in future situations and allow them to be consistent with their interpretation.

Chairperson Colling asked if the Board preferred a variance based upon conditions. He noted by granting a variance and giving a strict interpretation, any other similar circumstances would have to come before the Board versus de facto granting of them.

Mr. Duistermars stated if the Board granted a variance, then similar cases would have to come before the Board. He noted if the Board gave an interpretation, then similar cases would not come before the Board.

Chairperson Colling stated this was the first two-story stone deck he had seen come before the Board in his fifteen years on the Board. He thought a variance would be acceptable due to the very small percentage the Board would see.

Mr. Monaghan stated he thought the Board would want proceed with a variance because he thought the Board would want to see similar cases come before the Board. He understood what the Board was doing and agreed with the Chair's analysis, but noted there was a bit of leeway. If it was a blanket interpretation, the City would begin to see all types of different situations the Board may not have anticipated.

Chairperson Colling agreed and stated the Board should also consider Staff's opinion in this matter.

Mr. Verschueren asked if the applicant needed a variance because it was a structure that he was attaching to another structure, and which had a foundation and walls. Mr. Cope stated he thought the reason for the variance was more that it was the Board's interpretation it was an addition, not a structure. He noted it would be a structure no matter how it was looked at. He commented it was the fact it was an addition and the primary basis for making that determination was because of the flat roof. He explained that other deck structures built on the back of houses are connected.

Chairperson Colling stated that some two-story decks are also built on concrete patios underneath with foundations and rat walls, which did not necessarily constitute a structure.

Chairperson Colling thought that because of the uniqueness of the situation, and Staff's opinion, the Board should proceed with a variance. He noted the Board should state clearly in their findings that they found this to be more of a deck than a structure; however, because of the uniqueness of the construction the Board could grant the variance.

Mr. Duistermars stated the Board should include a condition indicating that the main elevation of the deck has to be built of a certain material.

Chairperson Colling thought the Board just needed to include a condition that the applicant would work with Staff to change the plans for the second floor decking to allow light, air and water to pass through. Mr. Verschueren suggested the condition indicate it cannot be a solid roof or structure.

Chairperson Colling asked if the applicant would accept that condition.

Mr. Damico asked if the Building Department had ever looked at something like this before, noting it was unusual to him and he had been a builder and a journeyman carpenter for many years. He asked if there any reason the Building Department would have a problem with the structure having brick outer walls with a wood deck that would be bearing on structural steel.

Mr. Cope stated he did not see any problem with it as long as it was made out of the proper materials, such a treated wood where it was bearing down, and all decay resistant materials, which are normal construction requirements for a deck.

Mr. Damico stated that because it was a little unusual to him, he wanted to make sure he did not get caught between two different City Departments.

Chairperson Colling stated he wanted to be certain the applicant understood the intent and what the Board intended to grant, and that the applicant did not have any objections to the conditions if the motion is made.

Mr. Damico stated he understood the conditions completely and he thought it was a great idea.

Chairperson Colling stated the Board would leave the choice of materials and construction techniques up to Staff and the applicant. Basically, the Board was requiring a wooden deck as the roof over the access out from the first floor of the home.

Chairperson Colling asked if the Board was prepared to offer a motion.

Mr. Duistermars proposed the motion as provided in the packet materials, but requested the Board discuss the findings and conditions. The Board then reviewed the proposed findings and conditions.

Chairperson Colling referred to the conditions, and suggested a third condition be added that stated:

3. The materials used for the upper portion of the structure shall be consistent with decks as described and known to the Building Department and subject to Building Department approval.

Chairperson Colling asked if that condition would be acceptable to the Building Department. Mr. Cope agreed that was fine, and noted the Building Department understood it was the Board's intention that it was to allow something that allowed the passage of water.

Mr. Duistermars stated he would accept the addition of that condition to the motion. Chairperson Colling called for a second the proposed motion. Mr. Verschueren stated he would second the proposed motion.

Chairperson Colling called for discussion on the proposed motion on the floor.

Mr. Brennan asked if condition #1 should be modified because it referred to the site plans stamped as received by the City dated March 3, 2008.

Mr. Cope suggested that condition be modified to indicate the setback is 11.2 feet,

noting that the plans that had been submitted by the applicant were not accurate.

Mr. Brennan asked how the Board should change condition #1, noting the Board did not want the submitted site plan to be used.

Mr. Duistermars noted that condition #3 would force resubmittal of the plans.

Mr. Brennan suggested condition #1 be eliminated. Mr. Duistermars agreed that condition #1 should be eliminated and conditions #2 and #3 be renumbered.

Mr. McGunn asked if the term “deck” should be replaced with “open deck”, noting deck could be construed to mean a solid surface. Chairperson Colling stated he meant decking materials. Mr. Verschueren suggested the condition include approval by the Building Department.

Chairperson Colling suggested a condition be included that that Board felt this was more of an interpretation issue; however, based upon the uniqueness of the situation, felt a variance was in order based upon the unique construction techniques and the uniqueness of Walnut Brook Estates itself. Mr. Duistermars stated it related to the harmonious part of the neighborhood.

Mr. Brennan suggested that Chairperson Colling’s suggestion should be a finding rather than a condition. Mr. Duistermars agreed that would become finding #6 of the motion.

Chairperson Colling asked if the motion maker and seconder agreed with the revisions to the proposed motion on the floor. Mr. Duistermars and Mr. Verschueren agreed to the revisions to the proposed motion on the floor.

Chairperson Colling called for any further discussion by the Board on the proposed motion on the floor.

Mr. Damico asked for some clarification. He noted the motion mentioned the upper portion of the structure. Chairperson Colling stated that the Board was referring to the upper flooring portion of the structure. Mr. Damico wanted to be sure because “upper portion” could change the structure. Mr. Duistermars stated that was so that the flooring did not become a solid roof.

Chairperson Colling asked Staff if that condition was clear to Staff. Mr. Cope stated it was clear to him and the Building Department would work with the applicant.

Chairperson Colling stated that what the Board was requiring was that the upper story flooring be porous. Mr. Damico indicated he understood that, and wanted to be sure he would not be required to install wood rails.

Chairperson Colling called for any further discussion. Upon hearing none, he called for a roll call vote.

Complete Motion (as amended and voted):

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

Aye 7 - Duistermars, Brnabic, Verschueren, Brennan, Colling, McGunn and Monaghan

RESOLVED in the matter of File No. 05-045, that the request for a variance from Section 138-1111 (Schedule of Regulations) of Chapter 138 of the Code of Ordinances to allow a variance of 11.2 feet from the rear yard setback, be **APPROVED** for 3695 Cedar Brook to permit an addition to the rear of the structure (deck), Parcel Identification Number 15-32-376-065, Zoned R-4 (One Family Residential) based on the following Findings and Conditions:

Findings:

1. A practical difficulty or unnecessary hardship exists for this property or has been demonstrated for this property or parcel. Specifically, the subject Lot 65 of the Walnut Brook Estates Condominium complex is smaller in size than the other lots in the complex, resulting in the inability of the proposed addition to the existing residence to meet the Ordinance requirements of Section 138-1111 (Schedule of Regulations) of Chapter 138 of the Rochester Hills Code of Ordinances.
2. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same District or Zone.
3. The circumstances are not self-created by the property owner.
4. No feasible alternative exists that would allow the reasonable use of the property consistent with other similar properties located in the Walnut Brook Estates.
5. The granting of the variance would not be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future.
6. The Zoning Board of Appeals determined this variance request was more of an interpretation issue; however, based upon the uniqueness of the situation, decided that a variance was in order based upon the unique construction techniques and the unique, harmonious neighborhood of the Walnut Brook Estates Condominium complex.

Conditions:

1. The deck materials used for the upper flooring portion of the structure shall be consistent with decks as described and known to the Building Department, and subject to approval by the Building Department.
2. The structure shall conform to all applicable Codes and Ordinance Requirements, and

all applicable permits shall be obtained from the Building Department.

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Chairperson Colling stated for the record that the motion had carried, and advised the applicant to work with Staff on the project. Mr. Damico thanked the Board for their consideration.

This matter was Discussed

7. ANY OTHER BUSINESS

Chairperson Colling reminded the Board that the April 9, 2008 meeting had been cancelled and the next regular meeting would be held on April 23, 2008. He then called for any other business. Upon hearing none, he called for a motion to adjourn.

8. ADJOURNMENT

Upon **MOTION** by Verschueren, seconded by Duistermars, Chairperson Colling declared the Regular Meeting adjourned at 8:57 PM.

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

Judy A. Bialk, Recording Secretary