



Rochester Hills

Minutes

Zoning Board of Appeals

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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, May 12, 2010

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 7 - Jim Duistermars, Deborah Brnabic, Gerard Verschueren, J. Martin Brennan, Ernest Colling, Michael McGunn and Kenneth Koluch

Chairperson Colling stated that a Quorum was present.

Also present: Derek Delacourt, Deputy Director, Planning and Development

Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

2010-0212 April 14, 2010 Regular Meeting

Chairperson Colling called for any comments or corrections to the April 14, 2010 Regular Meeting Minutes. Upon hearing none, he called for a motion to approve.

Motion by Verschueren, second by Brnabic, that the Minutes dated April 14, 2010 be approved as presented.

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

COMMUNICATIONS

Chairperson Colling noted the updated roster for the ZBA members, which included the newest member, Mr. Koluch.

- A. Planning & Zoning News, April 2010 Edition
- B. Planning & Zoning News, May 2010 Edition

PUBLIC COMMENT

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 that all questions should be directed to the Chair.

NEW BUSINESS

2010-0213

Public Hearing - City File No. 75-272: A request for a Variance from Section 138-3.105 (Nonconforming Uses of Structures and Land) of the Code of Ordinances, which states that no existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. The submitted application proposes to construct a 1,300 square-foot addition to the existing structure. Located at 2095 Avon Industrial Drive, south side of Avon Industrial Drive, west of Crooks Rd., Parcel No. 15-29-276-010, zoned B-3, Shopping Center Business, known as Al's Auto Wash, Al DiSipio, applicant.

Chairperson Colling clarified that there were two requests, which would require two motions if the Board was inclined.

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.

Present for the applicant was Bill Mosher, Engineer, Apex

Engineering, 560 Whims Lane, Rochester, MI 48306, Al DiSipio, Owner, 2095 Avon Industrial Dr., Rochester Hills, MI 48309 and Kevin Brandon, Architect, Preview Architecture & Planning, LLC, 1440 Washington Rd., Rochester, MI 48306.

Mr. Mosher related that Mr. DiSipio owned three car washes - the Avon Industrial location since 1997 - and that Mr. DiSipio was a resident of Rochester Hills. There was a canopy at the southerly end of the building that housed pre-washing and initiation into the conveyer system for the auto wash, and it was a tight working condition. The purpose of the addition was to remove the canvas structure and replace it with a similar block construction, and make it much more efficient and an ergonomically-friendly work environment for the employees. There would be no additional employees or vehicles utilizing the car wash; the project was to improve the existing structure and increase security. He asked for questions or concerns.

Mr. Delacourt advised that the site was a condominium unit within a much larger parcel, and that only property line was the one between the car wash and the gas station to the east. The parcel held a bowling alley and three manufacturing buildings, and there was split zoning through the middle of the bowling alley. The 12.5-acre parcel had five buildings, three different uses and two zoning districts. Auto washes were usually conditional uses in the B-5 zoning district. At the time the car wash was constructed in 1975, auto washes were permitted uses in commercial zoning districts in the City. There was a question whether this one was zoned B-2 or B-3 at the time of construction, but the use was allowed when it was constructed. The change in the Zoning Ordinance created the use nonconformance. When it was built, the building's setbacks appeared to be permitted, but Staff could not find a record of

what the setback was then. Staff considered the 10.4-foot setback to the side yard property line a legal nonconformance for the existing building and canopy structure. Staff investigated the possibility of a Rezoning to eliminate the nonconforming use; however, they would have to eliminate the condo and do a land division, which would be more complicated.

Mr. Delacourt continued that the applicant was requesting a side yard setback variance to extend the easterly wall of the business and project approximately two feet closer to the easterly property line. The other variance dealt with the use. The total addition was 1,300 square feet, but it was actually 408 feet larger than the existing canopy and pole structure. Staff noticed it for a 1,300 square foot addition, but felt there was consideration that in actuality, because the car wash operations and tracks for the interior projected into the canopy, that the canopy was permanent, and the expansion of the nonconforming use was actually 408 feet. That would be a determination for the ZBA to make. He felt that there were unique circumstances with site.

Chairperson Colling opened the Public Hearing at 7:43 p.m. and seeing no one come forward, closed the Public Hearing.

Chairperson Colling referred to the first request, which he believed was a grandfathered use because the Zoning Ordinance changed, and the building predated that. He recalled similar ZBA cases which were approved when the permitted use status changed long after the property was built. He asked how the condo ownership worked.

Mr. Delacourt said that condo ownership was different than owning a parcel, and Mr. DiSipio owned the building unit and had rights to use the land. There was a combination of

other owners like Mr. DiSipio, and the whole condo was owned by the association and governed by the condo documents, much the same as a residential condo association.

Chairperson Colling and Mr. Delacourt discussed when the canvas portion was added, and Mr. DiSipio determined that it was put on as part of the original construction or shortly thereafter.

Chairperson Colling noted for the record that he had ruled on the car wash at Auburn and John R, before Mr. DiSipio was the owner, and that he used it and lived around the corner, but it would not affect his decision.

Mr. Brennan clarified that Mr. DiSipio's car wash would not turn into a "Jax" style. Hearing that the operation would stay exactly the same, Mr. Brennan asked Mr. DiSipio why he was doing the project. Mr. DiSipio stated that wished to preserve the property, but change the ergonomics of the conditions and upgrade the area. He had other locations, and he wanted them to match.

Mr. Brennan asked if there were any complaints from the neighbors and whether Mr. DiSipio had talked with the neighbors about the proposal. Mr. DiSipio advised that he had talked with people at the Shell station and with the Stolaruk family, who owned a lot of property in the area. Mr. Brennan indicated that the Shell station would be impacted the most, and he asked if the owners were o.k. with everything. Mr. DiSipio thought they were, and he added that they were aware of what he was doing.

Mr. Brennan noted that a concrete area and a shed were shown over the Shell's property line, and he asked if that was an encroachment. Mr. DiSipio said that the shed

would be removed. Mr. Brennan asked about the concrete, and Mr. DiSipio said that if they wanted it removed, he would do so, but he did not think it impacted them at all. Mr. Delacourt assured that if the variances were granted, everything would be subject to Site Plan Approval by Staff or the Planning Commission, and things that had to be moved would be corrected. Mr. Brennan questioned whether it would be a condition of approval, which was decided later in the discussion.

Upon questioning by the Chair about the proposed addition, Mr. DiSipio said that the employees would have a room where they could have lunch and some privacy.

Ms. Brnabic asked if the shed would definitely be removed, to which Mr. DiSipio agreed, and if an objective of the expansion was to have better movement for the employees. She asked for a brief regarding the façade, and Mr. DiSipio explained that he would like to change the shingles, and wanted to match the John R store, which had a red coloring. The new construction area would be a painted block with windows.

Ms. Brnabic clarified that the Shell station was not included in the condominium parcel. She asked how much space there was between the auto wash and the back of the station. Mr. Mosher said it was about 25-35 feet.

Mr. Duistermars asked if the proposed addition would be permanent, which was confirmed, and how high the ceiling would be. Mr. Brandon said it would be 13 feet inside and 18 outside. Mr. Duistermars asked if it would function like the canopy area for pre-wash. Mr. DiSipio emphasized that his operation would not change, and that the addition would not hold conveyer belt equipment. Mr. Duistermars asked if there would any storage in the addition, reminding that the

shed would be gone. Mr. DiSipio agreed there would be storage for items such as wheelbarrows and shovels, but not for liquids. He would not store liquids or any toxins, and he added that soap would be stored in his current chemical room.

Mr. Duistermars and Mr. Delacourt discussed condo lines and property lines, and Mr. Delacourt said that setbacks were measured from property lines, not from condo unit lines. Where Mr. DiSipio was allowed to build within the unit would be determined by the condo association documents.

Mr. McGunn observed that the engineering drawing and architectural drawing had a discrepancy. He clarified that the addition would project less than the canopy. Mr. DiSipio said they were asking for two additional feet. Mr. Mosher agreed there was a little discrepancy, but said it was only about a foot on the drawings. Chairperson Colling noted that the request was for an 8-foot setback and the drawing showed 8'4". Mr. Delacourt said it was noticed for greater - but they actually only needed 7'6," and it was rounded up.

Mr. McGunn noted that they needed more room for the workers, but he asked why it could not be flush with the existing building. Mr. DiSipio said that his preference was to have the additional footage for movement purposes. He indicated that Ms. Brnabic had been at his place earlier in the day, and he demonstrated it for her. On busier days, they had more people working, and there would be much more room, and better service. He mentioned that there were a lot more on-line applicants put on vehicles manually. In the 1970's, it was more automatic. There were more hoses on each side of the car they moved around, and it was important to have more room to swing them.

Mr. Delacourt asked Mr. DiSipio to confirm whether the two additional feet would improve the workers' safety. Mr. DiSipio agreed that it would help. When he discussed safety, he meant things like carpal tunnel injuries. Chairperson Colling added that in a less crowded environment, the workers were not as apt to trip over hoses, and they could swing the equipment with more maneuvering room.

Mr. Koluch asked if it would be feasible to build out more towards the west, and leave the eastern boundary the way it was. He asked if they looked at not going any farther towards the Shell station or if it was not possible.

Mr. DiSipio said that he could use what already existed, and to move it would be very costly. He stated that he did not have that flexibility. Mr. Koluch asked if there were any issues with the condo documents with respect to doing modifications. Mr. Delacourt said that Staff reviewed the documents and did not find anything that conflicted, but if there was, it would be an issue for the association and Mr. DiSipio.

Chairperson Colling summarized the input, and he did not think there was any disagreement that the use was grandfathered. He believed that the variance should be granted, and that it would follow other cases. He asked if there was further discussion regarding the setback motion. The members discussed motions.

Ms. Brnabic clarified that Rezoning the property would not be practical or that it would be complicated. Mr. Delacourt explained that if the property were Rezoned, there would still be a non-conforming structure and expansion, because it was too close to the side yard with a further projection into

the side yard. They would be dealing with the same two variances to allow the addition. Under the circumstances, Staff felt it was a much more reasonable course of action than Rezoning and dealing with the same variances, especially with the condo situation.

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

MOTION by Duistermars, seconded by McGunn, in the matter of File No. 75-272, that the request for a variance from Section 138-3.105 (Nonconforming Uses of Structures and Land), be approved to allow construction of a proposed 408 square-foot addition to the existing structure at 2095 Avon Industrial Dr., known as Al's Auto Wash, located on Avon Industrial Drive, west of Crooks, Parcel No. 15-29-276-010, zoned B-3, Shopping Center Business, Al DiSipio, applicant, with the following findings and subject to the following condition:

Findings:

- 1. A practical difficulty or unnecessary hardship exists for this property in that the previous zoning of the parcel was changed, disallowing the current use of the land.*
- 2. There are exceptional or extraordinary circumstances or conditions affecting this property that do not apply generally to other properties or uses in the same district or zone. Specifically, the zoning changed, disallowing the permitted use and making the use non-conforming.*
- 3. The practical difficulty results from the creation of a nonconforming use, which unreasonably deprives this*

owner of a substantial property right enjoyed by owners of similar property in similar circumstances.

- 4. No feasible alternative exists that would allow the reasonable use of the property consistent with other similar properties.*
- 5. The granting of this variance would preserve a substantial property right for the applicant as enjoyed by other property owners in similar circumstances, and thus substantial justice shall be done.*
- 6. The granting of this variance will not be materially detrimental to the public welfare or materially injurious to this property or any other properties or premises in the zone or district in which the property is located.*
- 7. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion in public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles; create any particular concern with the traveling public; unreasonably diminish or impair established property values within the surrounding area; or in any other respect impair public health, safety, comfort or morals, or the welfare of the inhabitants of the City for all of the reasons stated above.*
- 8. The granting of this variance is not expected to set a precedent because in cases where the zoning ordinance has changed, the ZBA has allowed the uses to be grandfathered.*

Ms. Brnabic asked if a condition should be added regarding

moving the shed, to which Mr. DiSipio had agreed. Chairperson Colling suggested the following condition, which stated that all plans will be required to be reviewed and approved by Staff.

Condition:

- 1. As the project moves forward, the addition will be required to meet all the requirements of Site Plan Approval.*

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

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

Chairperson Colling stated for the record that the motion had passed unanimously.

2010-0211

Public Hearing - City File No. 75-272: A request for a Variance of 17 feet from Section 138-5.100 of the Code of Ordinances, which requires a minimum side yard setback of 25 feet in the B-3, Shopping Center Business Zoning district. The proposed addition to the existing structure indicates a side yard setback of 8 feet. Located at 2095 Avon Industrial Drive, on the south side of Avon Industrial Drive, west of Crooks, Parcel No. 15-29-276-010, Zoned B-3, Shopping Center Business, known as Al's Auto Wash, Al DiSipio, applicant.

MOTION by Duistermars, second by Koluch, in the matter of File No. 75-272, that the request for a variance of 17 feet from Section 138-5.100 of the Code of Ordinances to allow a side yard setback of 8 feet be approved for 2095 Avon Industrial, known as Al's Auto Wash, located on Avon Industrial Drive, west of Crooks, Parcel No. 15-29-276-010, zoned B-3, Shopping Center Business, Al DiSipio,

applicant, with the following eight (8) findings and subject to the following one (1) condition:

Findings:

- 1. A practical difficulty or unnecessary hardship exists for this property in the form of a limited building envelope and existing location of the structure in relation to the eastern property line.*
- 2. The practical difficult is a result of a change in zoning requirements, creating the nonconforming side yard setback.*
- 3. There are exceptional circumstances with the property configuration, and no building envelope in alternative configurations. Thus, the property utilizes the only configuration that has some usable envelope. The site plan for this site clearly shows this piece of land to be unique in its physical characteristics. The situation is not self created.*
- 4. No feasible alternative exists that would allow the reasonable use of the property consistent with other similar properties.*
- 5. The granting of this variance would preserve a substantial property right for the owner as enjoyed by other property owners in similar circumstances, and thus substantial justice shall be done. The setback variance is necessary in order to meet all other zoning ordinance requirements.*
- 6. The granting of this variance will not be materially detrimental to the public welfare or materially injurious to this property or any other properties or premises in*

the zone or district in which the property is located. There are no indications given that this will impair the traffic on the road, the safety of those traveling the road, or those living on the property. The ZBA agrees that the proposed variance will not cause overbuilding of the site and will, indeed, allow minimization of impact upon the residential zoning located to the north of the property if the variance is granted.

- 7. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion in public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles; create any particular concern with the traveling public; unreasonably diminish or impair established property values within the surrounding area; or in any other respect impair public health, safety, comfort or morals, or the welfare of the inhabitants of the City for all of the reasons stated above.*

- 8. The granting of this variance is not expected to set a precedent because of the unique situation that exists with the condominium ownership and the change in zoning.*

Condition:

- 1. As the project moves forward, the addition will be required to meet all the requirements of Site Plan Approval.*

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

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

Chairperson Colling stated that the variance had been approved and congratulated the applicant. Mr. McGunn reminded that the drawings had to be coordinated before coming back.

ANY OTHER BUSINESS

There was no further business to come before the Board.

NEXT MEETING DATE

Chairperson Colling reminded the Board that the next Regular Meeting was scheduled for June 9, 2010.

ADJOURNMENT

Hearing no further business to come before the Zoning Board of Appeals, and upon motion by McGunn, second by Brnabic, Chairperson Colling adjourned the meeting at 8:26 p.m.

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

Maureen Gentry, Recording Secretary