

**City of Rochester Hills  
Department of Planning**

**STAFF REPORT TO THE ZONING BOARD OF APPEALS**

December 1, 2009

<b>46461 Dequindre Road Poultry on Lot Lesser Than One Acre</b>	
<b>APPLICANT</b>	Thomas Noyes 46461 Dequindre Road Rochester Hills, Michigan 48307
<b>LOCATION</b>	46461 Dequindre Road
<b>SIDWELL</b>	15-36-279-038
<b>FILE NO.</b>	09-004
<b>ZONING</b>	R-4 (One Family Residential)
<b>STAFF</b>	Derek Delacourt, Deputy Director
<b>REQUEST</b>	A <u>variance</u> from Section 138-4.436(A)(3) to allow the keeping of poultry (chickens) on a lot lesser in size than one (1) acre

**SITE DESCRIPTION:**

The subject site is located on the west side of Dequindre Road, south of Auburn Road, north of the M-59 Freeway in Brooklands Park No. 4. The subject site is developed with a single-family residence. The parcel is 123.11 feet wide along the north boundary, 124.25 feet wide along the south boundary, and 240 feet long, which is just under three-quarters of an acre in size. An acre equals 43,560 square feet.

The subject site is zoned R-4 (One Family Residential). The adjacent parcels to the north, west and south are zoned R-4 (One Family Residential). The property across Dequindre Road is located in Shelby Township and consists of a mix of retail and residential.

**SUMMARY:**

The applicant is requesting a variance to allow the keeping of poultry (chickens) on a lot lesser in size than one (1) acre. Section 138-4.436 (Raising and Keeping of Animals), Paragraph A states:

- A. The keeping of the following animals will be allowed without a permit under the following circumstances in any zoning district, unless there are other sections in this ordinance which are in conflict, and the raising and keeping of such animals is not for the purpose of breeding or selling them as a source of income.

Section 138-4.436, Sub-paragraph (3) states:

- (3) Poultry, if there are no more than 12 and the parcel or lot is at least one acre in area.

The applicant has owned his residence since 1998. He subsequently purchased the adjacent vacant parcel to the south in about 2000, identified as 46353 Dequindre, which is now developed with a single family residence, and is a rental property. That parcel is 124.25 feet wide, and 80 feet long, resulting in 9,940 square feet, under one-quarter an acre in size. Combining both parcels under common ownership results in an area less than one acre in size.

In his submittal documentation, the applicant provided the following responses to the reasons for the variance request:

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| Practical difficulty | “I feel my property has the characteristics of a larger parcel. I thought I had one acre, but did not take road variances into consideration” |
| Substantial justice  | “will allow applicant and family members to enjoy the chickens and their fruits”  |
| Lesser variance:     | “asking for smallest possible variance to comply with City Code”  |

The applicant is unable to increase the size of the lot and therefore reduce the requested variance.

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| Unique circumstances: | “The property is a corner piece on a major, noisy road (gravel trains and emergency vehicles due to close proximity to Beaumont Hospital)” |
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The applicant argues that the lot’s character is more “commercial” than the other lots in the neighborhood and, therefore, is unique. The applicant indicates that his lot has many similar characteristics of a commercial lot. It is very close in size to what is required.

The applicant notes that farm fowl are on the property across Dequindre Road in Shelby Township.

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| Not self-created:          | “property was reduced from one acre in size due to road variances”  |
| Public safety and welfare: | “even though less than one acre, have enough personal land to raise fowl. There is a 10-foot fence at the back of the property so the chickens cannot leave the applicant’s property” |

The applicant indicates that his adjacent property owners do not object to the chickens (see the attached handwritten note). The applicant indicates the chickens have a large fenced-in area and a coop for shelter.

The applicant states he provides eggs to an unemployed neighbor and a needy family with children.

### **REQUESTED ITEM:**

A variance from Section 138-4.436 (Raising and Keeping of Animals), Paragraph A(3) which permits the keeping of poultry if there are no more than twelve (12) and the parcel or lot is at least one acre in size.

The applicant has indicated a desire to work with the City to comply with his variance request.

### **ANALYSIS:**

1. The City's Building Department, Ordinance Enforcement Division, received anonymous complaints on October 27, 2009 and November 15, 2009 about chickens roaming the neighborhood (Ordinance Enforcement Complaint Work Orders attached).
2. The Zoning Board of Appeals has heard similar variance requests in the past. Copies of Minutes from the November 8, 1993; October 12, 1987; January 26, 2004 and February 23, 2004 meetings are attached. None of those earlier requests have been granted.
3. Brooklands Park No. 4 was platted in 1937. At the time of platting, the parcels comprising the applicant's property were 40-foot wide lots. The applicant's residence property is comprised of Lots 1919 to 1924 inclusive. The rental property parcel is comprised of Lots 1925 and 1926.

At the time of platting, the northern boundary of the applicant's residence parcel was 123.11 feet and the southern boundary was 124.25. Those are the same measurements that currently exist on the property.

Although the applicant believed his property lines were adjusted by road easements, the existing parcel dimensions do not support that.

4. The Planning and Economic Development Department received a telephone call requesting that if the chickens were permitted, they be required to be penned. (Memorandum attached).
5. The applicant has identified on his application the reason(s) for the requested variance.

The applicant needs to demonstrate that there is a practical difficulty or a unique circumstance that necessitates the variance, so as to allow for the enjoyment of a substantial property right that would be denied if not granted the variance.

Attachments: Application  
Location Map  
Aerial Photograph  
Ordinance Enforcement Complaints  
11/23/09 ZBA Memorandum  
02/23/04 ZBA Minutes (994 Maidstone Drive)  
01/26/04 ZBA Minutes (994 Maidstone Drive)  
11/08/93 ZBA Minutes (3320 Gerald)  
10/12/87 ZBA Minutes (3075 Emmons)

**Sample Motion Wording**  
(Board to decide if applicable during meeting discussion)

**MOTION** in the matter of File No. 09-004, that the request for a variance to permit the keeping of poultry (chickens) on a lot lesser in size than one (1) acre, be **APPROVED/DENIED** for 46461 Dequindre Road, Sidwell 15-36-279-038, with the following findings [and conditions – *only need conditions if approving*]:

Findings:

1. A practical difficulty has been demonstrated for this property. Compliance with the restrictions governing area will unreasonably prevent this owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome. **(Approval)**
  1. No practical difficulty or unnecessary hardship exists, or has been demonstrated, for this property or parcel. Specifically, no unusual property characteristics impair the appropriate use within the R-4 (One Family Residential) Zoning District. **(Denial)**
2. The granting of this variance would preserve a substantial property right for this owner as enjoyed by other property owners in similar circumstances, and thus substantial justice shall be done. **(Approval)**
  2. The granting of the variance is not necessary for the preservation and enjoyment of a substantial property right possessed by property owners in the same zone or vicinity, as the use of this property can satisfy the requirements of the R-4 Zoning District. **(Denial)**
3. The plight of the applicant is due to the unique circumstances of the property. Specifically, a unique circumstance has been demonstrated in that the property is larger than the other lots in the neighborhood; abuts a major thoroughfare, and the property owner also owns and controls the abutting parcel to the south creating two parcels under common ownership. The combined parcels under common ownership amount to just under one acre in area. **(Approval)**
  3. No unique circumstances have been demonstrated that would prevent the use of the property as intended. **(Denial)**
4. The circumstances are not self-created by the property owner. **(Approval)**

4. The circumstances are self-created by the property owner in the form of the applicant's desire to keep and raise chickens on a lot lesser in size than one acre, which does not meet City Ordinance requirements. **(Denial)**
  
5. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion on public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles or create any particular concern with the travelling public; or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City for all of the reasons stated above. **(Approval)**
  
5. The granting of the variance would be materially detrimental to the public welfare or materially injurious to the property in such Zoning District in which the property is located by establishing a precedent that could be cited to support similarly unwarranted variances in the future. **(Denial)**

**Conditions: [only use with motion to approve]**

1. The granting of this variance includes a requirement to keep the number of poultry on the property to no more than twelve (12).
  
2. The poultry must be penned or similarly contained on the applicant's property so as to avoid any poultry wandering off the subject parcel or roaming onto adjacent properties or roadways.