

~~Chairperson Cockey noted 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 will 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.~~

~~(Arrive Member Robbins: 7:33 PM)~~

Chairperson Cockey stated the Agenda for the meeting included a variance request that had been postponed at the January 23, 2004 meeting, a use variance request, and an extension of a sales trailer permit. He suggested the Board consider the extension of the sales trailer permit due to the fact those items are typically quick matters.

MOTION by Colling, seconded by Brennan, that Agenda Item #8 be heard prior to Agenda Item #6.

Ayes: All
Nays: None
Absent: None

MOTION CARRIED

~~Upon a determination that the applicant for Agenda Item #8 was not present, Chairperson Cockey continued with Agenda Item #6. Members agreed to resume the Agenda as prepared.~~

6. UNFINISHED BUSINESS - FILE #04-001

(This matter was *postponed* at the January 26, 2004 ZBA Meeting.)

Location: 994 Maidstone Drive, located in the East Hampton Subdivision, west of John R and south of Hamlin Road, Parcel Number 15-26-228-001, zoned R-4 (One Family Residential).

Request: A variance from Section 138-1073(a)(3), to allow the keeping of poultry (ducks) on a lot lesser in size than one (1) acre. Section 138-1073(a)(3) permits the keeping of poultry, if there are no more than twelve and the parcel or lot is in excess of one acre.

Applicant: Jing Pang
994 Maidstone Drive
Rochester Hills, Michigan 48307

Chairperson Cockey reviewed the request for this matter, noting a Public Hearing had been held at the January 23, 2004 Zoning Board of Appeals (ZBA) meeting. He stated several requests to speak on this matter had been received, and indicated he would reopen the Public Hearing at 7:36 PM. He requested that those individuals who spoke at the last meeting not speak again unless they had something fundamentally different to say, and requested the speakers keep their comments brief.

David Sills, 892 Norcross, stated he resides directly behind Ms. Pang's residence. He indicated the issue for him was the fact that it was against the City Ordinance for poultry to be on land less than one (1) acre in size. He stated he has a daughter who would be walking very soon, and

there were duck droppings in his back yard because the ducks wander through all the yards. He indicated he did not want his daughter to pick up the duck droppings or put them in her mouth. He stated he also had concerns about his young nieces and nephews visiting and playing in his back yard. He commented this was not something that belonged in the subdivision, it was a violation of City Ordinance, and he expected the City to uphold the Ordinance.

Larry Mercer, 900 Norcross, stated he lived in close proximity to the Pang residence. He indicated he was unable to attend the meeting in January regarding this matter; however, based on what he had heard from the residents who had attended, he was disappointed about how the meeting turned out. He stated if there was an Ordinance on the books, he expected the ZBA to enforce the Ordinance. He indicated he had heard from residents who did attend the meeting that a Board member had suggested the applicant postpone her request; attend the next meeting and her request would be approved. He stated when he purchased his property, he expected a certain quality of living; and noted he did not reside on property that was more than one acre, where he would expect issues such as ducks. He explained the properties in his subdivision were small and there was not room for that type of situation. He felt approval of the applicant's request would only "open the door" for other problems. He stated the residents in the subdivision wanted to keep their property values up, and he did not feel granting the variance would be in the best interest of the residents of the subdivision.

Bryan Smith, 2093 Wentworth, stated he spoke at the last meeting, but wanted to make the point clear that the residents of the subdivision expected the ZBA to uphold property values as was intended by the City's forefathers when the Board was designed and developed. He indicated the residents expected the ZBA to abide by the City Ordinance, which did not allow poultry on lots less than one acre in size, and the residents of the subdivision would hold the ZBA accountable for that.

Steve O'Donnell, 2107 Wentworth Drive, stated the issue for him was health concerns. He stated he and his wife take their daughter to the bus stop, which is located in front of the Pang residence. He explained during the spring and summer, the adjacent yards are covered with feathers and animal excrement. He indicated this was a health issue, as well as a Code violation.

Pat Somerville, 47091 Dequindre, stated she was present mainly because she had received many telephone calls regarding this issue. She explained she had researched the Ordinance, which indicated a duck was poultry, not a cat or a dog, and ducks were not allowed in subdivisions. She felt that was very clear in the Ordinance, unless the property was one acre or more in size. She noted ducks were messy, and should not be considered for a subdivision. She stated there were small children that would be playing in the yards in the subdivision, and they would be walking in the duck droppings, and perhaps wiping their hands and then putting their hands on their clothes or in their mouths. She felt this matter was also a health issue. She stated ducks, chickens, or fowl as pets of any type did not belong in a subdivision.

Sandra Porter, 849 Norcross, stated she is a resident of the Easthampton Subdivision. She believed the residents of Rochester Hills had a right to a certain expectation of a quality of life, which did not include living next to properties that have barnyard-type animals on them. She felt the Ordinance was quite clear, and requested the Board to review and uphold the Ordinance.

Erik Olson, 974 Hillsborough, referred to Section 14-9 (Running at large) of the Ordinance, which states: “(b) Domestic animals. No person shall permit any cattle, horse, swine, sheep, goat, or poultry to run at large in the city. Any domestic animal running at large in any public place in the city shall be impounded in accordance with county regulations.” He stated a “duck is a duck”, he knew what it was, and could describe it on the street. He said ducks were not allowed unless the property was more than one acre, and the applicant did not have more than one acre. He felt it was a “shut case” and that was the end of the story. (For the record, Mr. Olson stated he resided at 852 Hillsborough, although his speaker card reflects his address as 974 Hillsborough. A check of the City’s records reflects Mr. Olson’s residence as 974 Hillsborough).

Chairperson Cockey called for any other persons who wished to speak on this matter. There being no additional requests to speak, he closed the Public Hearing at 7:44 PM.

Chairperson Cockey summarized the motions presented at the January 23, 2004 ZBA Meeting. He noted Mr. Rosen had presented a motion stating that the ducks in question fell under the definition of poultry, which motion was seconded. He stated a motion was then presented by Mr. Brennan, that was seconded, to table Mr. Rosen’s motion. He noted Mr. Rosen’s motion was tabled at that time. He explained that a motion was then presented by Mr. Robbins, seconded by Mr. Brennan, requesting the City Attorney to review the Ordinance and provide an opinion, which motion failed. He stated a motion was presented by Mr. Rosen, seconded by Mr. Robbins, to postpone the matter to a meeting at which all seven (7) Board Members were present, which was the reason the matter was back before the Board at this meeting. He stated a motion was then made by Mr. Colling, seconded by Mr. Weisberger, requesting the City Attorney to review the minutes of the January 23, 2004 meeting and provide his comments regarding this matter, which motion carried.

Chairperson Cockey stated Mr. Rosen’s motion from the January 23, 2004 meeting was back on the table. He explained that motion could be left on the table, or action could be taken on the motion. He suggested if the Board wished to discuss a motion for an interpretation as to whether the ducks in question should be considered as pets under the Ordinance, it would be more effective to have a motion stating that.

Mr. Colling suggested the Board review the correspondence from the City Attorney, noting it covered both Mr. Rosen’s and Mr. Brennan’s concerns. He stated it appeared from the decision presented by the City Attorney, that this case was fairly clear.

Mr. Brennan stated he had reviewed the City Attorney’s opinion, noting he had requested it because he wanted to be absolutely sure the Board had clarification as what constituted “poultry” and what constituted “pets”. He noted there had been considerable discussion among the Board members at the January meeting regarding what was considered pets. He indicated the City was a transitional community changing from somewhat rural to suburban, noting at that time individuals did have ducks as pets. He stated he was satisfied with the City Attorney’s opinion that ducks were poultry and did not constitute pets.

Mr. Brennan commented he felt the Board had been appropriate in its actions at the January meeting, noting a healthy debate was good and the matter had been explored, as the issue could come up again. He stated the Board tried to protect the rights of individuals, and he felt the applicant deserved the courtesy of the Board determining where two ducks fit in this situation. He noted for any animal, domesticated or undomesticated, if there was a nuisance, that was a violation of the law and was a law enforcement matter rather than a Zoning Board of Appeals (ZBA) matter. He stated if the neighbors felt there was a true nuisance, the matter should be directed to Code Enforcement.

Chairperson Cockey questioned whether the Board was prepared to make a motion indicating the proper interpretation of the Ordinance was that the ducks would be considered pets. Upon hearing none, he suggested the Board consider the applicant's request for a variance. He noted the Board had previously held a rather lengthy discussion regarding the request.

Mr. Verschueren pointed out the ZBA was required to follow certain rules mandated by law. He stated the Board was not permitted to grant a variance if the situation was self-created. He noted the applicant's situation was self-created.

Mr. Rosen stated in order to ensure that the record was clear, his motion made at the January 23, 2004 meeting stated that the ducks in question fell under the definition of poultry, are considered domestic poultry (ducks), and therefore, fall under Section 138-1073 and are regulated under poultry if there are no more than twelve and if the parcel or lot is in excess of one acre. He felt that would make it clear the Board had reviewed the issue and determined the ducks were regulated under the Ordinance.

Chairperson Cockey clarified that Mr. Rosen wanted to bring his motion from the January 23, 2004 back to the table. Mr. Rosen indicated he did. Chairperson Cockey called for a vote on the motion to bring Mr. Rosen's January 23, 2004 tabled motion back to the floor.

MOTION by Rosen, seconded by Robbins, that a motion made by Rosen, seconded by Colling, and tabled at the January 23, 2004 meeting, be placed back on the table for consideration at this time.

Roll Call Vote:

Ayes: Colling, Verschueren, Brennan, Weisberger, Cockey, Robbins, Rosen
Nays: None
Absent: None

MOTION CARRIED

Chairperson Cockey read Mr. Rosen's tabled motion for the record and called for discussion on the motion. There being no discussion, he called for a roll call vote.

MOTION by Rosen, seconded by Colling, that the Zoning Board of Appeals finds in the matter of File No. 04-001, that under Section 138-3 (Definitions), the ducks in question fall under the definition of "poultry" and are considered common or domestic poultry (ducks), and therefore, fall under Section 138-1073(a)(3) (Raising and keeping of

animals), and are regulated under "poultry" if there are no more than twelve and the parcel or lot is in excess of one acre.

Roll Call Vote:

Ayes: Colling, Rosen, Robbins, Verschueren, Weisberger, Brennan, Cockey

Nays: None

Absent: None

MOTION CARRIED

Chairperson Cockey stated the applicant's request for a variance should be considered.

Mr. Colling questioned whether the applicant's request was for a use variance or a variance. Chairperson Cockey felt the request qualified as a use variance. He clarified that the request was for a variance, which would give an exception to following a zoning ordinance, which was the original matter filed for.

Ms. Millhouse questioned whether the applicant had applied to vary the fact that she had to have a lot over one acre, i.e., whether the applicant had applied for a dimensional consideration.

Chairperson Cockey stated the request was for a variance from the size, not a request to keep poultry on a lot. He noted a use variance required particular findings and conditions in connection with the motion.

Members requested a short recess in order to prepare a motion.

(Recess: 7:57 PM to 8:05 PM)

MOTION by Rosen, seconded by Colling, in the matter of File No. 04-001, a request for a variance from Section 138-1073(a)(3) to allow the keeping of poultry (ducks) on a lot lesser in size than one (1) acre, for 994 Maidstone Drive, located in the East Hampton Subdivision, west of John R and south of Hamlin Road, identified as Parcel Number 15-26-228-001, zoned R-4 (One Family Residential), that the Zoning Board of Appeals **DENIES** the variance with the following findings:

Findings:

1. The applicant has not demonstrated any unusual circumstances or practical difficulties that affect this property in a residential zoning district. No testimony has been presented to show that the circumstances for this property are any different than any other residential property in the City.
2. The ZBA finds the granting of a variance would alter the essential character of the area and locality. Specifically, granting the variance would affect the quality of life in and around the subject property and be detrimental to the health and safety of these and nearby residents.

3. The ZBA finds that the applicant's request is self-created based on their desire to keep ducks within a residential zoning district. Specifically, the keeping of poultry on less than one (1) acre.
4. The ZBA finds the granting of this variance would negatively impact the spirit of the ordinance by allowing the keeping of poultry in a residential zoning district of less than one (1) acre.
5. The granting of this variance would not promote the intent and purpose of the ordinance to restrict the raising of poultry to lots of sufficient size to allow proper husbandry.
6. Granting such a variance would be precedent setting, making it difficult for enforcement to follow through on cases of this type and for this Board to maintain decisions on these matters.

Roll Call Vote:

Ayes: Brennan, Weisberger, Robbins, Verschueren, Cockey, Colling, Rosen
Nays: None
Absent: None

MOTION CARRIED

Chairperson Cockey noted the applicant's request had been denied, and advised the applicant she had the right to appeal the Board's decision to Circuit Court.

~~NEW BUSINESS~~

~~**PUBLIC HEARING – FILE #03-015**~~

~~Location: Vacant parcel adjacent to 1812 and 1814 Rochester Road, located on the west side of Rochester Road, north of Hamlin Road, Parcel Number 15-22-451-033, zoned R-3 (One Family Residential).~~

~~Request: A use variance, pursuant to Section 138-113 (Use variance) of Article III of the Code of Ordinances, to allow parking in an R-3 Zoning District for use by businesses of the adjacent office buildings.~~

~~Applicant: Stanley H. Finsilver
34975 West Twelve Mile Road
Farmington Hills, Michigan 48331~~

~~Chairperson Cockey read the request for the record, and noted the applicant was present.~~

~~Stanley H. Finsilver, 34975 W. Twelve Mile Road, Farmington Hills, provided the following review of his request. He stated since 1998 his property has housed a Mercy Care Clinic and professional offices from St. Joseph Hospital. He indicated the rear building has housed a pediatric dentist's practice for several years. He noted both uses had become a part of the community and serviced many of the City's residents, and were an asset to Rochester Hills.~~

~~Mr. Finsilver stated zoning services were available in order to enhance and service the residents as the community continues to grow and flourish. He noted both Mercy Care and the dental~~