



Rochester Hills

Minutes

Zoning Board of Appeals

1000 Rochester Hills Dr
Rochester Hills, MI
48309
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Home Page:
www.rochesterhills.org

Chairperson Bill Chalmers; Vice Chairperson Kenneth Koluch
Members: Deborah Brnabic, Jayson Graves, Dale A. Hetrick, Jason Sakis and Charles
Tischer

Wednesday, October 13, 2021

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Chalmers called the Zoning Board of Appeals meeting to order at 7:00 p.m.

ROLL CALL

Present 5 - Bill Chalmers, Jayson Graves, Dale Hetrick, Kenneth Koluch and Jason Sakis

Absent 2 - Deborah Brnabic and Charles Tischer

Quorum present.

OTHERS PRESENT

Kristen Kapelanski, Manager of Planning
Jennifer MacDonald, Recording Secretary

Ms. Brnabic and Mr. Tischer provided prior notice that they were unable to attend and were excused.

APPROVAL OF MINUTES

[2021-0415](#) Approval of Minutes - August 11, 2021

MOTION by Koluch, seconded by Graves that the Minutes dated August 11, 2021 be approved as presented.

Aye 5 - Chalmers, Graves, Hetrick, Koluch and Sakis

Absent 2 - Brnabic and Tischer

COMMUNICATIONS

Michigan Planner, September and October 2021
Chairperson Chalmers also noted Staff has sent some emails regarding Planning conferences, and noted Board members should contact Ms. MacDonald if they would like to attend.

PUBLIC COMMENT

Chairperson Chalmers opened Public Comment at 7:03 p.m. Seeing no one wishing to speak, he closed Public Comment.

NEW BUSINESS

[2021-0413](#)

PUBLIC HEARING - City File No. 21-031

Location: 1835 Crestline St., located north of Hamlin Rd., Parcel No. 15-22-451-027, and zoned R-3 One Family Residential with MR Mixed Residential Overlay.

Request: A variance from Section 138-10.107 Fences of the Code of Ordinances, which states that fences that are located along the side and rear lot lines shall be a maximum of six (6) feet in height and may not extend closer to the front lot line than the front of the dwelling or the minimum front setback, whichever is less. The submitted plans are for an 8 ft. high chain link fence located up to the front of the dwelling, set back from the northerly side yard lot line, and along the rear and southerly lot lines.

Applicant: Dale Upleger, 1835 Crestline St., Rochester Hills, MI 48307
(Reference: Staff Report prepared by Ms. Kapelanski dated October 6, 2021 and application documents had been placed on file and became part of the record thereof.)

Dale and Madelyn Upleger of 1835 Crestline St. attended the meeting to represent themselves.

Chairperson Chalmers introduced the request for an 8 ft. fence and asked for Ms. Kapelanski's comments.

Ms. Kapelanski reviewed the request for an 8 ft. high fence, which is 2 ft. higher than what is permitted in residential zone districts. She pointed out that the setback and location of the fence does meet ordinance standards. The fence is shown on the site plan to extend to the front of the house, and the house is set back farther than what is required in the zone district. She noted that it is just the height restriction that the applicant is asking for relief on tonight.

Chairperson Chalmers reiterated that the only item the ZBA is considering is the 8 ft. fence height, with the type of fence and the location being compliant. He asked Mr. and Mrs. Upleger to come to

the front and to present their variance request.

Mr. and Ms. Upleger provided a zip drive to show many pictures of their yard and the deer in their yard. Staff and the Board discussed trying to get the zip drive to show on the overhead screen but were not able to due to technical issues.

Chairperson Chalmers advised the applicant that two members are absent from the meeting tonight, and that to be granted a variance requires the votes of the majority of the entire board, so that they would need 4 out of the 5 board members in attendance tonight.

Mr. Upleger acknowledged this and said that they have a compelling case. He said that they wanted to show that they have a hardship with the deer ruining their turf. He explained that their property is wetlands and they would like to show a movie of water flowing through their land, which he cannot control. He said that the deer tend to gravitate toward that soft mud, they like to play in it and dig it up. Mr. Upleger summarized his hardship of this damage, he did not think that anybody else has that amount of water in their backyard. Ms. Upleger noted that their neighbor has a pond on their property.

Chairperson Chalmers addressed a neighbor in attendance who spoke and said that the Board would love to hear from her and directed her to fill out a card to speak. He told the applicant that the good news is that up to a 6 ft. high fence is allowed, and directed him to center his discussion on the additional 2 ft. of height that he is requesting for the variance. He explained that will help the Board to narrow their understanding of the issue and allow them to be able to render a decision.

Mr. Upleger said that probably at least half of all deer can jump a 6 ft. fence very easily, and they need the additional fence height in order to keep their yard salvageable. He described how their yard has been torn up, when the deer get in the yard they dig it up, and there is nothing that can be done. He said that he's rolled the turf three times this year. Ms. Upleger said they've had to put topsoil down and get spray grass, which they applied last fall because it was so bad. She said that within a week the grass was coming up, they had stakes all

around the area, which the deer tore down. She explained that they then saw the bucks out there with their antlers digging up the whole back yard. She said she has pictures of what the yard looked like afterwards, after they had spent all of that money. She said that with all of the construction going on behind and across the street from them, and down Livernois, the deer are in their back yard now. She said they've seen a herd of 15-20 of them out there at a time. They have about an acre of property, and she has about 15 gardens with flowers and in two nights they wiped everything out. Ms. Upleger explained that the previous night she went into the yard to try and trim back what the deer had damaged so it would grow again. She said that over the years they planted about 40 rose bushes, and now she has about six left, they ate them down to the ground, thorns and all. She said that the deer have attacked her and run at her when she's in the yard. She asked what you are supposed to do if you're in the yard and there's a 10 or 12 point buck running at you. She said that she works out in her yard 4-6 hours every day, and she has found deer ticks on her this year, worse than ever. She said that she has asked the City to relocate the deer; asked if the City could have a cull; if they could have a temporary hunting license with just a bow and arrow; asked if whoever owns the adjoining property could cut the vegetation down. She explained that they have to keep their grass and plantings cut down, and they had even started to cut into the adjoining field for 3-4 years. She said that they have tried everything, including putting soap to deter the deer, however the deer just ate the soap.

Chairperson Chalmers explained that his wife has tried similar measures, and he said that he completely understands these issues and many of the Board members have experienced such issues. He directed the applicant to focus the discussion on the 6 ft. versus 8 ft. fence, and explained that the Zoning Board of Appeals is in place to have a laser-light focus on items like this. They must evaluate a request that deviates from code, so it really comes down to the 2 ft. increase in height. Chairperson Chalmers asked that if the applicant has anything else to add to that the Board would like to hear it, otherwise the Board members will have some questions.

Mr. Upleger said that all he trying to do is to save his property. He

said that he's a 34 year resident of the City. Chairperson Chalmers said he's seen their property and appreciates how well kept it is, and their hard work shows. Ms. Upleger said that it's not that they hate the deer, she loves them, they're beautiful, she just doesn't want them eating her flowers.

Vice Chairperson Koluch asked the applicant whether their house is subject to homeowner's association bylaws. Mr. Upleger said it is not.

Vice Chairperson Koluch asked for more information regarding the small structure on the northeast corner of their lot. Mr. Upleger explained that it is a 20 ft. by 36 ft. pole barn. Mr. Upleger explained that he wants to keep the fence back and away from the street, and since three parcels share their northern property line they were going to keep the fence set back and stay on the south side of the barn, so the fence would be about 25-30 ft. from the north property line. He said that they are proposing the fence to then run along the rear and southerly lot lines. He explained that they are the lowest lot on the street and probably in the whole neighborhood. He said that all of the water flows to their property and keeps their property wetter than anybody else's and the deer like that.

Vice Chairperson Koluch noted that the applicants said in their application that the primary reason they need the fence is for keeping deer out of their garden, however they are talking about the entire property with the deer eating the grass.

Mr. Upleger said that the deer eating the flowers are a hardship since this has cost them thousands of dollars, however they also have the hardship of the destruction of their turf.

Vice Chairperson Koluch asked Ms. Kapelanski for clarification of whether homeowners can install a chicken wire fence and whether that would be subject to the same limitations in terms of height.

Ms. Kapelanski said the City does not regulate vegetable garden fencing such as chicken wire, unless they enclosed their whole property and then it would become a residential fence. She

explained that looking at the intent of the ordinance, the City is not looking to regulate a little raised garden fence, and instead would look to regulate fences that have more of an impact on the character of the neighborhood.

Mr. Hetrick asked the applicant to justify why an 8 ft. fence is needed instead of a 6 ft. fence.

Mr. Upleger said that the deer can jump a 6 ft. high fence too easily, and he has heard that they can even jump a 10 ft. fence. He explained that if he can keep out more deer his gardens will be better off.

Mr. Hetrick said that he doesn't know the statistics and he is not a deer expert, but if he could keep 50% of the deer from jumping then maybe the other 50% would not jump the fence also, since they tend to act in the same way. He commented that he sees them often all playing, or if one runs they all run, or they all lay down, they seem to be followers. He said that he doesn't have 20 deer in his yard but he does not live too far from the Uplegers.

Ms. Upleger said that she's more of an expert because she has read everything about what she can do, what she can spray, and what she can put down. She said that now is the time of year when the males have their big antlers, and they're out there just digging in the ground.

Mr. Hetrick said that if the applicants had a 6 ft. high fence that would probably keep most of the deer out, and noted that if the deer could see the fence easily that would assist in keeping them out.

Mr. Upleger said that if the deer can see through a chain link fence he might need to put ribbons in it, but an 8 ft. high fence would give him 50% more of a chance of keeping them out.

Mr. Graves mentioned that a lot of people have this deer problem, and approving this request would be setting a precedent. He commented that the applicant discussed their drainage issues, and that may be something that needs to be explored. He noted that he doesn't know what the possibilities are or where the water is coming

from. He asked why the water does not have a place to go, and commented that doesn't really have anything to do with this variance request but that could be a potential solution to the applicant's deer problem.

Mr. Upleger said that their house is the lowest spot on the street and he cannot cut his grass for approximately 3 days after it rains because it's too wet. Ms. Upleger said that their neighbors can all cut their grass 3-4 hours after it rains, but his water table is much higher. He commented that if he was trying to explain his hardship it would be that no one else has such a flow of water through their property. He said that deer repellent spray, liquid fence, deters the deer when it's cold outside but it doesn't work when it's hot outside.

Chairperson Chalmers noted that Mr. Graves is a civil engineer by trade, so the applicant may want to take his comments to heart.

Mr. Sakis asked if any neighbors in the immediate area of the applicant's home have fences at all. He explained that the purpose of the fence rules used to be to keep livestock in, and from a governmental standpoint a purpose is to ensure no one has a spiked fence. He noted that he's not an expert by the 6 ft. maximum height must mean something. He said that above 6 ft. height it would become unsightly for neighbors, and if everyone installed an 8 ft. fence then it would be a problem. He said that he has the same issue with the deer eating all of his flowers but he doesn't have the same issue with the deer eating his grass. He asked the applicants to explain when the grass issue started, if it has been going on for years or if it is more of a recent issue.

Mr. Upleger said that the grass issue has been going on for a long time, although last year was the worst year.

Mr. Sakis asked why the applicant did not seek this fence variance last year.

Mr. Upleger said they have been trying to work with the City to have the deer relocated or to get the City to cut the vegetation in the lot behind them. He said that the reason that the issue is so bad now is

because they are building everywhere in the area and the deer have nowhere else to go.

Mr. Sakis said that he's not an expert, and noted that the deer may still be able to jump a 6 ft. fence but it would likely be enough of a deterrent that they would not; however he could not say that with any certainty.

Ms. Upleger said that they did have a chicken wire fence to enclose their gardens previously; however she watched the deer jump straight up and into the garden. She said that they have tried every spray and even hair in order to deter the deer, and nothing seems to work.

Mr. Upleger said that he's not saying that his situation is different from anyone else's situation; however he is just trying to protect his yard.

Chairperson Chalmers opened the Public Hearing at 7:25 p.m. He noted that one letter had been received from Mr. Gary Elrod (495 Parkland Dr.) and summarized that Mr. Elrod understands the issue but feels the height is excessive, so the letter is considered to be in opposition to the request.

Paul Schira - President of Sycamore HOA - 227 Parkland, Rochester Hills, MI 48307 *Mr. Schira explained that he came to the ZBA meeting out of curiosity. He said that he agrees with Mr. Graves that 8 ft. seems excessive; he understands the need but it would be setting a precedent, and it would be bumping up to properties in his association. He said their HOA only allows fences if the homeowners have a pool. He said that another issue he sees is that with the new construction west of Crestline and with the new subdivision proposed to the east of the applicant, he would hope that would help the situation. He also explained that he had been talking to the developers of the subdivision that is located west of Eddington and although they said that they had a detention pond that would meet the 100 yr. flood requirement, it has overflowed five times so far this year. He explained further that their detention pond is tied to that pond, so when it overflows some of the water goes into their pond, which happens to be along Rochester Rd. He said they plan to*

re-dredge their pond in the next few years. He said that with the fence open on the front end, he doesn't know how much it will help on the back end since the deer can certainly walk around and enter through the front.

Mr. Upleger clarified that the fence would not be installed on the north side of his pole barn; they would be using the pole barn as part of the fence and then continue to the property line. He said there will be a 25 ft. buffer between the fence and the neighbor's lot to the north.

Mr. Schira said that with the new development going in behind the Uplegers' property that may help with the deer issue. He explained that his understanding was that there is going to be a walkway south of Parkland and there will be a buffer that will be two football fields wide.

Chairperson Chalmers clarified that the Zoning Board of Appeals has not seen plans for the proposed development to the east of the Uplegers' property and therefore cannot comment on it. He encouraged Mr. Schira to speak at the Planning Commission regarding this issue, and noted that the ZBA is only considering the 2 ft. fence variance request tonight.

Mr. Schira said that he has a problem with the additional 2 ft. fence height and noted that is a precedent that they don't want to set.

Chairperson Chalmers thanked Mr. Schira for his time and for serving as an HOA president.

Elizabeth Hurst - 1840 Crestline St., Rochester Hills, MI 48307

Ms. Hurst said that she came to stand up for the Uplegers' fence request. She explained that she visits their yard often. She said that the deer damage her yard as well but mostly her vegetable garden. She has been able to keep them out of the garden by changing what she puts on or around the garden numerous times, and half of their vegetable garden is underwater now. She said that when the City put in the street they took out a drain pipe which she opposed, and now the water backs up from the ditch. She said that the deer don't even walk in the water, they go around it and over to the Uplegers' yard.

She said they are lucky because they have wild growth all around their property, however the water is still a huge problem and they definitely need the fence. She explained that the fence will not hurt anyone else in the neighborhood since they will leave room for the deer to get through. She said the deer are really damaging the Uplegers' yard and the Board is welcome to go out and look at it.

Chairperson Chalmers thanked Mrs. Hurst for her comments and for being a resident of Rochester Hills. Chairperson Chalmers closed the Public Hearing at 7:33 p.m. and asked for the applicants' final comments.

Mr. Upleger asked if he is denied by the ZBA whether he could put a 6 ft. fence wherever he wants on his property.

Chairperson Chalmers said that they could work with the Planning Department to determine permitted fence locations.

Mr. Upleger explained that he's trying to keep the fence below the property to the north, and noted that their property is 1.5 - 2 ft. higher than his. He said that he's putting the fence closer to his house, and that would make it a 6 ft. high level fence on the pole barn side. He said that if he's not allowed to do an 8 ft. fence then he could go right up to the shrubs on the north side of his property.

Ms. Kapelanski commented that the applicant would be allowed a 6 ft. fence around the perimeter of their yard, extending up to the front of the house, and no further to the front than that.

Mr. Upleger said that would cut shrubs off from his neighbors because the neighbor's shrubs are planted on his property.

Ms. Kapelanski responded that such a situation would be a neighbor dispute that the homeowners would have to solve and they would have to get a survey, and the City would not get involved.

Chairperson Chalmers suggested it sounds like the applicant is in agreement with the 6 ft. fence and asked if he would like to withdraw his application.

Mr. Upleger said that he still wanted more than a 6 ft. fence, it would be the best for them and for the neighborhood.

Chairperson Chalmers asked for any further comments and none were provided.

Mr. Hetrick said that as Mr. Upleger was speaking about how he would install then fence, he thought that if the applicant placed a 6 ft. high fence as shown on the site plan it would not be interfering with the neighbor's arbor vitae or the property line. He commented that an 8 ft. fence is a 2 ft. variance which he would not agree with because what the applicant identified as their practical difficulty is limited at best. He said that he understands the Uplegers' concerns about the deer, he said that he also has a low lying yard and it gets pretty soggy and that does seem to attract deer; however those issues are not really relevant to the fence height. He said that he's almost certain that the same plot plan with a 6 ft. fence height would be approved.

Mr. Upleger said that if they can only have a 6 ft. fence they may want to install it up to the property line.

Vice Chairperson Koluch said the problem he's seeing is that it would be difficult to deny a subsequent application for an 8 ft. high fence on another property. To approve this application would be setting a precedent so that anyone could come ask for an 8 ft. high fence, and it would be difficult to say no if it is granted in this case.

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

Aye 5 - Chalmers, Graves, Hetrick, Koluch and Sakis

Absent 2 - Brnabic and Tischer

Resolved, in the matter of File No. 21-031, that the request for a variance of 2.0 feet from Section 138-10.107 of the Rochester Hills Code of Ordinances to allow an 8 ft. chain link fence to enclose the rear yard at 1835 Crestline St., Parcel Identification Number 15-22-451-027, be denied because a practical difficulty does not exist on the property as demonstrated in the record of proceedings and based on the following findings:

1. Compliance with the strict letter of the restrictions of the Zoning Ordinance will not prevent the owner from using the property for a permitted purpose in a reasonable manner

by installing a 6 ft. high fence.

2. Granting the variance will not do substantial justice to nearby property owners as it would confer a special benefit on the applicant that is not enjoyed by other property owners in the vicinity.

3. There are no unique circumstances of the property have been identified by the applicant that necessitate granting the variance, as a residential lot backing to an open field is not unique in the City.

4. The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future.

ANY OTHER BUSINESS

Ms. Kapelanski introduced the Planning and Economic Development map on the City's website. She explained that the City's MIS Department has put information into one map in layers that you can turn on and off as needed that was previously located in separate maps, including wetlands, floodplains, aerial photos back to 1940, and tax information. She advised the Board members to contact the Planning Department with any questions regarding this new map.

NEXT MEETING DATE

Chairperson Chalmers reminded the ZBA members that the next Regular Meeting was scheduled for November 10, 2021.

ADJOURNMENT

There being no further business to discuss, Chairperson Chalmers adjourned the meeting at 7:45 p.m.

Minutes prepared by Jennifer MacDonald.

Minutes were approved as presented/amended at the _____ 2021 Regular Planning Commission Meeting.

Bill Chalmers, Chairperson

Jennifer MacDonald, Recording Secretary