

DISCUSSION

2021-0571 Ordinance Amendment Discussion

In attendance were Jill Bahm and Joe Tangari, Giffels-Webster.

Ms. Kapelanski reviewed the staff-led proposed zoning ordinance amendments to address front yard parking in residential districts, swimming pool fences, maximum building parapet height, the keeping of poultry, as well as other code amendments regarding blight and temporary signs. If the Commission is interested in reducing the standard for the size of property required to keep chickens, then staff can research this further and bring them forward to a future Planning Commission meeting.

Chairperson Brnabic asked whether generally parapet heights are 3-4 ft. and asked if that seems to be pretty consistent. Ms. Kapelanski said that a lesser height is not wanted since the parapets are used to screen rooftop equipment; the intent is to consider a maximum. She said a minimum standard is probably not necessary, it really is dictated by whether there are rooftop units for a particular building.

Chairperson Brnabic said that requests for variances have been brought to the Zoning Board of Appeals for poultry, and they have also seen nuisance complaints. She said one nuisance complaint was for someone keeping twelve chickens on a smaller lot. She commented that she had no issue with researching to determine a reasonable standard for reducing the property size requirements to have chickens, and perhaps six chickens would be reasonable.

Mr. Kaltsounis said that his house on Hazelton had an old chicken coop on 5/8 of an acre. He said that the only thing that concerns him is that when he would stay at his grandmother's house the roosters woke him up every day. He asked where on the property a chicken coop would be allowed.

Ms. Roediger responded that the ordinance can stipulate that there would be no roosters allowed.

Ms. Kapelanski added that coops would be required to be located and screened per the existing accessory structure provisions of the ordinance.

Mr. Kaltsounis noted that regarding parapets, he would make 4 ft. the minimum because the newly manufactured roof mounted mechanical units are higher, and can be 6 ft. high; and high efficient units are even higher.

Ms. Kapelanski responded that in such an instance additional screening would be required.

Chairperson Brnabic asked for clarification as to whether poultry would be required to be kept in a rear yard.

Ms. Kapelanski responded that a chicken coop would be an accessory

structure and would be required to follow those regulations. For discussion this evening the goal is to determine whether the Commission may be interested in lowering the standard for the size requirement of the property to keep poultry. She suggested that if the Commission would like staff to look at additional standards regarding the keeping of poultry, that can be done.

Chairperson Brnabic said most people would probably not want to see poultry kept in a front yard.

Mr. Hooper said that he agrees with the proposed amendments for residential parking, pool fences, parapet heights, and he agrees with 4 ft., blight and signs, but not for poultry. He said that there are very few new houses on half acre lots and there shouldn't be chickens allowed in existing subdivisions.

Mr. Struzik said that he agrees that parking in the front yard of a residence should be restricted. He explained that he did a lot of research on keeping chickens and his wife grew up on a farm. He said that chickens are less of a nuisance than some dogs. He said that for a one-half acre property perhaps allowing six chickens would be a good number, and to restrict the chickens to female hens since only roosters are noisy.

Dr. Bowyer said that sometimes she may have 30 people parking at her home for a party or get together.

Ms. Kapelanski said the intent of the ordinance is to address repeated use of parking in the front yard.

Ms. Welch clarified that this is not meant for instances when people have a party, it's meant for people who continuously parking on their grass.

Dr. Bowyer said that it's hard to differentiate and asked who the ordinance would be trying to stop parking in the front yard.

Mr. Cope responded that in Ordinance they keep track of concerns expressed by residents, and they receive five complaints each year about people continuously and daily parking their cars in their front yard. He said he feels it is the Building Department's obligation to bring the issue forward for discussion. He said that currently they don't have the tools to address the concern.

Dr. Bowyer asked for clarification about the location of the parking of concern.

Mr. Cope clarified the concern is about parking on their own yards.

Dr. Bowyer suggested this may be opening up a can of worms.

Mr. Cope said many people don't think that Rochester Hills is a place where people should be parking all over their front yards.

Dr. Bowyer said she understood the concern is about the front lawn. She said that she agrees with the proposed pool fence language, and is accepting of allowing a 4 ft. high building parapet. She said that she does not think that the

keeping of poultry is necessary in a city and it attracts coyotes. She agreed with the blight and temporary sign language.

Mr. Kaltsounis shared his screen with an aerial photograph of cars parked in the front lawn of a residential property and where the grass was worn away from parking.

Mr. Cope noted that the ordinance doesn't control where people could park on pavement, and the whole front yard could be paved. He said that the green area of lawns being used for parking is the general concern.

Mr. Gaber agreed the City should look into the residential parking language. He agreed with the pool fence language and asked why the parapet height maximum is necessary and if people abuse the use of parapets.

Ms. Kapelanski responded that it hasn't been a problem; it is considered a revision to clean up the language.

Mr. Gaber said that he's not sure why it needs to be addressed. He said that he is against expanding the allowance for having poultry, noting that if you were to look at the number of parcels in the city that are one half acre or larger it may be triple or quadruple the number and this would open it up to a lot more residences.

Chairperson Brnabic said that she doesn't have a problem with moving ahead with the parapet maximum, keeping one step ahead. At this point it seems that we have unanimous agreement regarding prohibiting residential parking on a front lawn. It looks like we also have unanimous support with regard to the swimming pool fence provisions. With regard to the keeping of poultry there are a few different opinions.

Ms. Kapelanski said since there is some interest in poultry, staff will look into it more and will bring the topic back to the Commission who can then as whole can decide if they want to move forward.

Chairperson Brnabic asked for confirmation if chickens would need to be kept in a coop and would not be running around in other people's yards. She said that they had a case before the ZBA where that scenario happened, they did have a coop in the rear yard but the chickens got out and a lot of the complaints were due to the chickens getting out of the yard. She said that there is unanimous support for the pool fence, temporary signs and parapet height provisions with the exception of Mr. Gaber's comments.

Mr. Hooper asked for clarification that the parapet provision is to address screening rooftop mechanical units.

Ms. Kapelanski agreed.

Mr. Hooper said that perhaps it could say that the parapet must be 4 ft. or less depending on the size of the mechanical units to be screened. Mr. Hooper said with regard to chickens, on a half-acre lot and a 35 ft. rear yard setback, and if a

person puts a 20 ft. deck in their backyard, that chicken coop is within the 15 remaining feet and backing up to the neighbors. He said that he just doesn't see that this is a workable solution at all. If people thought about it they would see that's not going to work.

Ms. Bahm said that at Giffels Webster they have been working on potential amendments to areas of the ordinance pertaining to uses and their impact on adjacent properties, including home occupations, lighting, and performance standards. With regard to home occupations, she said the aim is to make the provisions sound more positive instead of presenting them in a negative tone, and in other ways to address specifics of what the City is trying to regulate. In looking at the provisions, they considered the impact to neighbors, in order to discern more clearly whether a home occupation is a nuisance or if it is similar to other activities that are taking place in the neighborhood.

Chairperson Brnabic referred to the proposed provision allowing employment of two people as part of a home occupation. She said that her understanding was that home occupation is confined to the people who live in the dwelling. She said that she doesn't know that she's comfortable allowing people with a home occupation to hire people.

Ms. Bahm responded that that concern has been discussed, and that way of writing the ordinance is typical, but the thought is in recognition of the fact that where we work is changing. It is not uncommon to see an office or administrative use as a home occupation, those workers are not always working out of an office now.

Chairperson Brnabic asked whether people are going to work in someone else's home. She said that what this brought to mind that would be comparable to their own small business, they could be selling retail, which concerns her a little bit.

Ms. Bahm asked Chairperson Brnabic to be specific about her concerns about this, what would the impact be, such as traffic generated, so that those concerns could be accessed. She said that the ordinance conditions address these items, such as complying with the performance standards which would be discussed later, including noise, served by limited traffic, etc. She said you still have traffic in a neighborhood. With the home occupation, everything has to be contained within the house and no external impacts to the neighbors are permitted. She said that if you think about those things the number of people employed may not be critical if the other conditions are met.

Mr. Kaltsounis asked what people like hobbyists can do in their garage. He said that he performs metal fabrication and welding in his garage. He asked whether such activities would have been covered by the old ordinance. He said someone down the street from him operates a lawnmower repair business in their garage and people complain because they leave equipment outside.

Ms. Bahm said that it would be considered whether the activities are going to impact passers-by. She said that the noise for metal fabrication would be covered by performance standards provisions for noise. If the resident was storing equipment outside that not allowed.

Mr. Kaltsounis asked the difference between a home occupation and a hobby, the lawnmower repair is a hobby.

Ms. Bahm said that has not been discussed but perhaps the blight standards would apply.

Mr. Cope said that small engine repair could be addressed as blight if it was taking place outside of the garage. He noted the ordinance provisions presented here are fine tunings that staff feels would be helpful. He explained that staff sees changes that are happening about how people are using their homes. For instance, an accountant can easily employ two people. He said that the reality is the only way such provisions are enforced is through a complaint basis. If no one complains then the City does not know about it. He said that there are a lot of home occupations right now in the City, if they are doing it in a respectful way, keeping cars parked in the driveway, and if they are not impacting the neighbors the city is not aware of them.

Mr. Kaltsounis said that many years ago he interviewed at a fuel oil supplier that was operating out of a house off of Brewster. He said in that instance the number of employees would have applied. He asked if the ordinance should address whether the business has customers visit and whether they are generating more traffic than a regular house.

Ms. Bahm said that would be addressed by #3.

Mr. Hooper said that such uses for home occupations would be less obtrusive than having a child care service, and those are permitted and he does not have an issue with it.

Mr. Struzik remarked that he works 32-40 hours per week in his home and doesn't have an issue with that. He said that he knows people who operate as hair dressers and he has no issue with that. With regard to signs, he said that he is not sold on allowing a small nameplate sign for a residence. He suggested that would be more appropriate for the City of Rochester, adjacent to a downtown area, where there are residential structures but it isn't necessarily a residential area. He said that he once lived next to a home occupation that was an issue, an old neighbor worked on racecars, and he would fire up the engines; however that would be addressed by another ordinance. He said that he had another neighbor who worked on power boat motors, he hired a few people and it was never an issue.

Dr. Bowyer said that she doesn't want to have a business next door to her, and does not think there should be any home occupations allowed in residential zoning. She said that she thinks this will open it up so that you can't say anything.

Mr. Gaber said that he is reluctant to open up the home occupation provisions; he wants to have the ability for enforcement purposes and he commented that some of this language makes that more problematic. He said that his biggest issue is with the two non-residents employed, it could create a nuisance and he

read provision #3. He said that he thinks this is a very subjective standard, he doesn't think "limited traffic" is a good standard because it's not objective, although he understands the concept. He asked whether commissioners should look at other considerations, such as whether to look at if customers are coming to the residences.

Ms. Bahm said that would be covered by provision #3. Ms. Bahm suggested the commissioners think about all of the Amazon trucks that are driving through residential subdivisions every day, which are not regulated. She asked the commissioners to consider if someone was home bound, and is currently having all of their goods delivered, that is not regulated. If commissioners are concerned about an abundance of traffic, it is hard to draw that line with other such traffic being generated.

Mr. Gaber said that there is no problem with a resident getting deliveries for a residential use, but he wants to look at restrictions for operating a home occupation. He said that someone with a home business could have a client come to their home every hour which may not be desirable, plus two employees. He said that he had a friend who ran a silk screening shirt business out of his basement with two employees and UPS or Fedex making deliveries all of the time, it was much more intensive than a regular residential use. He said that the standards need to be tightened up.

Mr. Gaber asked if there are any ordinances to contemplate short term rentals.

Ms. Roediger acknowledged that the "bed and breakfast" ordinance section is very outdated; however that provision was left alone since there will be some new state legislation regarding that and anything written could be overturned in a month. She explained that the lines are blurred between home and work with Covid, and a lot of these activities are already happening in neighborhoods. She said if you Google there are eight people running businesses out of their homes on her street; they are having assistants and many people come to their homes. She said we are trying to acknowledge what is already happening out there, and give ordinance the tools for enforcement when it becomes a problem. She said that we talked extensively about how to look at traffic generated by a home occupation, and realized between Grub Hub and Shipt shopping deliveries, Amazon, FedEx and UPS trucks up and down residential streets every hour. She said this is the way life is going to be, it is common for someone to for example, run an Etsy business out of their basement or a hairdresser, a repair shop or a hobbyist. She said that we want to specifically identify what are the concerns. We are looking at the disruption of the neighborhood character. If it is addressed in a way that looks at the specific concerns, such as noise, aesthetics, outdoor usage, traffic; then these are things that Mr. Cope and his team can monitor and address. This is already happening, and these provisions would give the City more realistic teeth to help with enforcement.

Mr. Gaber said that allowing for two nonresident employees opens this way up and in some ways it's more restrictive, and he's not sure how he comes out on this.

Ms. Bahm asked if it would it help to say that employees shall park not on the street, so parking must be provided on the driveway.

Mr. Gaber said that would help.

Mr. Kaltsounis asked if hours of operation are regulated.

Ms. Bahm responded that the City does not currently regulate that. She said that can go back to what is happening in the particular neighborhood, if it is consistently quiet at 10:00 p.m. and someone is out repairing their engines then someone would probably call to complain.

Mr. Cope said that hours can be regulated based on enforcement of the existing noise ordinance. Hours for something like an accountant or a hairdresser operating a home occupation would be more difficult. He explained that at one time the City tried to regulate the square footage of a home that was being used for a home occupation, however that is not a reasonable method that is enforceable. He noted that after hours, noise complaints go to the Oakland County Sheriff's Office.

Dr. Bowyer asked why the number of two nonresident employees was picked.

Ms. Bahm responded that two employees would not allow for a full blown office situation, but that it's going back to the impact. She asked the commissioners to consider what specifically would be the impact to neighbors of having two employees, and whether it would be a problem of the noise or the actual activity.

Dr. Bowyer said the City should not put a number on the number of employees allowed because it would not be enforced based on that.

Ms. Roediger clarified that the provision could stay silent about the number of employees allowed, and then a homeowner could have four employees as long as it was not a problem otherwise. She said there are people coming and going homes all the time, various workers, nannies, etc., and a lot of people have assistants. If it stays silent on it, they could have three or four employees if it's not a problem.

Ms. Roediger said this is just for discussion; staff will present another version in January. The purpose is to give ordinance better and more updated standards to enforce.

Ms. Bahm explained with the lighting provisions, the ordinance is looking to acknowledge new lighting types. Definitions were added for fixtures like Edison bulbs, a definition added for lumens, and a definition provided for strip lighting outlining windows. Staff is also looking at the applicability of this to some older buildings, and when there are upgrades made, considering when we require them to bring lighting up to code. Also there is a section for glare, and a lot of communities are trying to address glare since it can really affect drivers, especially at night. With regard to light trespass standards, additional standards have been written, including minimum standards for pedestrian areas, building entrances, driveways, and making sure lighting is not creating "hot spots". The

provision prohibits flashing and moving lights, and lights that reflect upwards, while providing exemptions for holiday decorations and public right-of-way lighting.

Mr. Tangari explained a new color temperature standard which was developed because LED lighting seems brighter because it's bluer. He said there is a color temperature limit of 3000 Kelvins and included a graphic to depict what is allowed. He said that a warm yellow light is much less intense at the same brightness than a bluer light, and many LED fixtures use a bluer light.

Ms. Roediger explained that staff reviewed the lighting ordinance and took into account complaints from residents, including complaints from neighbors of places of worship. She said that the ordinance team has been challenged with how to address those lights. This is not a dark sky ordinance, but it definitely decreases the intensity of lights allowed, and she said that the City may see some pushback from businesses such as gas stations and car dealerships who typically want very bright lights on their properties. She said that the ordinance needs to protect the night sky and residential neighborhoods from light pollution. She said that this is a big change in the ordinance and was intentional on the City's part.

Chairperson Brnabic referred to the T-Mobile on Auburn Rd. which has flashing and moving colorful lights, and asked how that was permitted to begin with.

Ms. Roediger said that existing condition would be grandfathered; these provisions would be for moving forward.

Mr. Cope said they can look into the T-Mobile, staff may not have necessarily observed those conditions at night.

Chairperson Brnabic suggested that the concrete base of light poles should be included as part of the permitted 15 ft. height.

Mr. Tangari explained that the height of a light pole is measured from the ground to the face of the fixture itself, so the height of the base is taken into account with this measurement.

Dr. Bowyer said that she has been meeting with residents regarding the proposed Chick-fil-A on Rochester Road and there are lighting concerns there. She said residents have complained to the City numerous times regarding the existing Wendy's restaurant and have just given up. She said that Wendy's has four lights in their parking lot that are tilted up and it looks like daylight 24 hours a day. She said those lights are very bright and glaring when you drive by and you would need blackout drapes if you lived in one of the houses behind there. She asked if these new provisions would apply to this situation, and asked who is responsible for enforcement of such matters.

Mr. Cope replied that he was not aware of complaints regarding lighting at Wendy's. He said that it is common for businesses to replace their lights with LED lights which may prompt complaints. He explained that staff has a light meter which they can use to verify if lights are in compliance with the ordinance.

If they are not in compliance, they require them to provide us with a lighting/photometric study which gives details and will show what they need to do to bring it into compliance. He said that he will check the Wendy's location.

Ms. Roediger said sometimes businesses take lights that were downward facing and aim them up which causes that issue, and all that takes is for Ms. Welch to go out there and remind them the lights need to be directed downward.

Mr. Hooper asked if staff has compared the proposed required illumination standards with OSHA requirements. He explained that OSHA has required lighting for parking areas and maneuvering lanes and 4 footcandles is not enough; that may be an issue.

Ms. Bahm responded that they would look at that. He commented that allowed footcandles at the property line used to be 0 or 1, now it's 0.1.

Mr. Tangari responded that 0.5 footcandles were allowed at the property line previously.

Mr. Hooper referred to the new Section C requiring that all outdoor light fixtures be fully shielded, and asked how this would be possible at Borden Park.

Ms. Roediger responded that Section C is being removed, there is no reason to call that out. She said that you can actually now purchase fully shielded fixtures for athletic fields. Any existing fixtures would be grandfathered.

Mr. Struzik said that he is someone that cares about color temperature and he wholeheartedly agrees with the limits on color. He questioned whether this applies to LED signage such as on an educational campus, and noted he is concerned about a sign that was installed by Rochester Community Schools on John R at the Schultz Educational Campus.

Ms. Bahm said the provisions have a reference to the sign ordinance.

Ms. Roediger said that public schools are exempt from such local zoning regulations.

Mr. Struzik said that sign has a fence in front of it, when you drive by it seems like it is flashing like a police car. He asked if we already have a mechanism to deal with broken and flashing signs and lights. He said this can be an issue for people with photo sensitivities who are driving at night and is also an issue from an appearance standpoint.

Ms. Welch said such issues would be addressed under property maintenance regulations.

Mr. Struzik said there is a sign at the gas station at John R and Auburn has a very bright that is flashing on and off; and if there is already a mechanism to address that then it can be done. Sometimes lighting on properties like gas stations is necessary for safety but too much can provide distraction and be blinding for people driving and can affect pedestrians as well. Especially on

days like today, which would be the shortest day of the year, people may want to take their dog on a walk and can be blinded by the lights which may also make it harder for drivers to see those pedestrians.

Mr. Kaltsounis said that he assumes that all future lighting will be LED, or could they still install other lights that would be outside of the color palette.

Mr. Tangari agreed, noting he's not sure if you could save any money using a mercury light for example; generally the color temperature of those lights is already in the range.

Ms. Bahm said that part of the reason for the ordinance amendments is in recognition that lights are already changing for their energy saving properties, but not specifying they have to use a certain light.

Mr. Tangari said a fluorescent light could still be installed but it would have to meet the same standards. He said most modern lights are not rated by wattage standards so a new standard is needed.

Mr. Kaltsounis said the ordinance needs to address the LED strip lights that businesses are adding either inside or outside their windows and he shared some photos. He said that with any architectural light one should not be able to see the bulb.

Ms. Bahm said the ordinance does not allow those.

Ms. Roediger said the new ordinance clarifies that window lighting visible from the outside must comply.

Mr. Gaber asked if these provisions would apply to residential properties, and noted sometimes security lights within a subdivision can be a nuisance.

Ms. Roediger said that when that issue was discussed with the commission years ago there was not a desire to regulate lights on residential properties. The thoughts were that as long as the light is not trespassing onto other properties there was not a desire to regulate residential properties.

Mr. Gaber said it wouldn't bother the neighbor if it does not trespass, he thinks that circumstance should be addressed. With regard to road lighting, the traffic circle at Hamlin and Livernois is great, then you come up to Tienken and it looks like an airport with all of the light.

Ms. Roediger said the public right-of-way lighting is exempt.

Mr. Gaber asked if staff could show examples of the light values allowed.

Ms. Bahm referred to the section that says that the Building Director can take steps to address residential light issues, so the City does have the ability to regulate that.

Ms. Welch commented that in the instance of a neighbor making a compliant

about another resident's light, they would send a letter asking the resident with the offending light to be a good neighbor and to redirect their light.

Ms. Bahm explained the last set of provisions for performance standards. She said this is a bigger umbrella of regulations that didn't fit into other categories, including smoke, odor, gases, noises, hazardous substances, more about glare, and vibration, and how to create measurable standards for enforcement. She said these will be removed from the zoning ordinance and added to the general ordinance. These are looking at airborne emissions for instance, using standards that are used on a federal level. She said that for electrical disturbances they are just being consistent with FCC regulations. With regard to hazardous substances, it's about the City being aware of when those are used onsite. They had talked about an overall improvement for enforceability is to move this from the zoning ordinance to the general code and to remove the possibility for an existing nonconforming situation.

Ms. Roediger said that moving the vibration standards out of the zoning ordinance will eliminate nonconforming sites and for requests to the Zoning Board of Appeals for relief from the requirements. She said it gives more teeth for ongoing enforcement situations in the City that are what prompted this rewrite to begin with. Secondly, she said that unlike lighting which is fairly well defined, a lot of these are more difficult to measure, and this puts the onus on the property owner to prove that they are meeting the ordinance. These two big changes will really help the ordinance team and in turn provide a large benefit to residents and businesses that are on the receiving end of some of these issues.

Mr. Hooper referred to a mosque using loudspeakers and if the vibration requirements would affect that. He said there is no way they could comply with the vibration standards.

Ms. Bahm noted that a place of worship would be exempt.

Ms. Roediger agreed that could not be enforced based upon freedom of religion.

Mr. Hooper noted the vibration standards for construction and for work on public residential streets, he said in construction there is no way he can comply with that.

Ms. Roediger said there could be an exemption provided for such activities.

Dr. Bowyer asked with regard to the odor, the dilution to threshold number 7, she said that 4 is the normal city odor that is allowed. She said that is pretty noxious based upon her reading and it should be moved to 4 instead of 7. She said that it is pretty interesting that you can put a number to measure odors,

Mr. Gaber asked how these standards compare to comparable communities.

Ms. Bahm responded that a lot of other communities in Oakland County don't have this level of detail in their ordinances, but certainly other communities across the country do.

Ms. Roediger explained that specifically regarding vibration, staff has been looking at amendments to make the ordinance enforceable for a few years. Staff has looked at how nearby communities have addressed this issue and many have taken a very "gray" approach. She explained that we tried to go by that; however this method has proven to be unenforceable. The current ordinance, nobody can meet, a car driving by would violate the vibration ordinance. So we were looking to fix it without getting into an in-depth study, and that's what prompted us to look into some language that would be enforceable and not so gray. The existing performance standards have not been touched in decades. Ms. Roediger explained that the proposed ordinance amendments are in much greater detail than any community she has been involved with, and said this will be pretty cutting edge. It will be up to property owners to prove they meet the provisions, and the requirements only come to light when there is a complaint, it will not be common, there have been one or two vibration complaints in 20 years.

Mr. Gaber asked if there are any issues with proving you are not guilty.

Ms. Bahm responded that it is demonstrating that you are in compliance.

Mr. Hooper said that OSHA has a great standard for lighting requirements and we should look at that.

Chairperson Brnabic asked when staff will be coming back with a final version of the amendments.

Ms. Roediger reminded the commissioners there will be January 31st joint meeting with City Council, and said amendments may or may not be ready to present in January.

Discussed