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Ms. Sara Roediger, Director
Planning Department
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: *Interpretation of "Established Building Line"*

Dear Ms. Roediger:

You asked for my written opinion concerning how to properly interpret and apply the term, "Established Building Line," as that term is used in the Zoning Ordinance. The term is relevant to determining the minimum required front yard setback for structures along a street where adjacent dwellings are setback more than the minimum yard setback prescribed in the Schedule of Regulations, Section 138-5.100. In cases where adjacent dwellings exceed the minimum required setback, the "Established Building Line" concept requires a form of setback averaging for any new construction.

Specifically, in the Footnotes to the Schedule of Regulations, Section 138-5.101, Paragraph B, it says:

Established Building Line. In the event that there is an established building line along a street (as determined by reviewing the application), the front yard and/or side street yard setback requirement shall be the established building line. The established building line is the average front yard setback minus 10 feet of adjacent dwellings within 200 feet of each side of the lot and on the same side of the street as the subject parcel, or 60 feet, whichever is less. Refer to the following illustration for an example of an Established Building Line calculation...

The footnote goes on to include an illustration and an exception. Although the illustration provides guidance, it also muddies things in that the illustration calculates the established building line a little differently than the text says in 138-5.101.B. In particular, the text requires us to determine the average front yard setback of adjacent dwellings within 200 feet

on the same side of the street, *then* subtract 10 feet to come up with the Established Building Line. But, the illustrated example says subtract 10 feet from the setback of each adjacent lot before averaging them together to come up with your Established Building Line. This causes slightly different results. Although, ideally, the ordinance should be internally consistent, my advice would be that generally accepted rules of statute and ordinance construction would require us to use the Established Building Line result that is most favorable to the person to whom the ordinance is being applied.

My “take aways” from these provisions are:

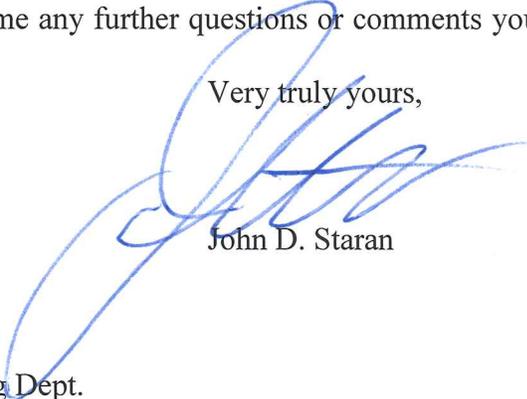
- Based on other provisions in the Zoning Ordinance, corner lots will essentially have two front yard setbacks (i.e., front yard setback along both abutting streets).
- The “Established Building Line” provisions require that in cases where the adjacent homes within 200 feet on the same side of the street have setbacks exceeding the minimum required setback prescribed in the Schedule of Regulations, the minimum required yard setback for the subject new structure will be the lesser of 60 feet or the average of those abutting homes setbacks less 10 feet. In no case does the subject lot need to be setback more than 60 feet.
- The Exception in Footnote B relaxes this setback averaging formula in cases where the adjacent homes’ setbacks do not exceed the minimum required setback by more than 10 feet. It basically says that if the Established Building Line calculation does not exceed the minimum required setback prescribed in the Schedule of Regulations by more than 10 feet, then you can disregard it and simply use the minimum required setback. For example, in the R-3 District, the Schedule of Regulations prescribes a 30 feet minimum front yard setback. If the Established Building Line calculation results in less than 40 feet, the Exception tells us we can disregard the Established Building line and apply the 30 feet setback prescribed in the Schedule of Regulations. Conversely, if in this example the Established Building Line is instead calculated to be 40 feet or more, then the Exception does not apply, and the applicant has to use the Established Building Line calculation for the setback.
- The ordinance, particularly the illustrated Established Building Line Calculation Example, appear to contemplate that the subject lot is undeveloped. This leaves unanswered the questions whether the Established Building Line provisions apply at all, and when the subject lot is developed but is being added onto, or whether the setback of the existing dwelling on the subject lot should be considered or ignored in the Established Building Line calculation? I think the answer to the

first part of the question is yes, the Established Building Line provisions do apply when the subject lot is already developed. Otherwise, it would require an undeveloped lot to conform to the Established Building Line, but then after it is developed, the Established Building line could be ignored and circumvented through construction of additions, which would be an absurd result. Less settled, I think, is whether to consider or ignore the existing setback of a developed subject lot. It makes sense to me that it should be considered – after all the existing dwelling contributes to the established building line just as much as the adjacent dwellings do. But, the text of the ordinance does refer to the setbacks of the “adjacent” dwellings. So, it is unclear. I think what is intended is to not have the subject lot’s setback deviate significantly from the average of the setbacks of other nearby dwellings on the same side of the street – of which the existing dwelling on the subject lot is certainly a part. Consequently, I think the ZBA may determine that it is consistent with the spirit and intent of the ordinance to consider the setback of the existing dwelling on the subject lot when computing the Established Building Line.

- One final takeaway I have is that these ordinance provisions are difficult and awkward, at best, to construe. Staff or the ZBA may want to recommend reexamination and possible amendment of the wording of these provisions and perhaps even a reexamination of the fundamental purpose or objective the Established Building Line calculation to make sure it is still necessary and appropriate.

As always, I will welcome any further questions or comments you may have concerning this matter.

Very truly yours,



John D. Staran

JDS/ijd

cc: Mr. Scott Cope, Building Dept.
Mr. Tim Hollis, Building Dept.