



# Rochester Hills

## Minutes

### Zoning Board of Appeals

1000 Rochester Hills Dr  
Rochester Hills, MI  
48309  
(248) 656-4600  
Home Page:  
www.rochesterhills.org

*Chairperson Ernest Colling, Jr., Vice Chairperson Gerard Verschueren*  
*Members: Deborah Brnabic, Jim Duistermars, Adam Kochenderfer,*  
*Kenneth Koluch, Michael McGunn*

---

Wednesday, July 10, 2013

7:00 PM

1000 Rochester Hills Drive

---

#### CALL TO ORDER

*Chairperson Colling called the Regular Meeting to order at 7:00 p.m. in the Auditorium.*

#### ROLL CALL

**Present** 6 - Deborah Brnabic, Ernest Colling, Adam Kochenderfer, Kenneth Koluch, Michael McGunn and Gerard Verschueren

**Absent** 1 - Jim Duistermars

*Also Present: James Breuckman, Manager of Planning*  
*Bob White, Supervisor, Ordinance Enforcement*  
*Sandi DiSipio, Recording Secretary*

#### APPROVAL OF MINUTES

2013-0249 June 12, 2013 Regular Meeting Minutes

**A motion was made by Verschueren, seconded by McGunn, that this matter be Approved as Presented. The motion carried by the following vote:**

**Aye** 6 - Brnabic, Colling, Kochenderfer, Koluch, McGunn and Verschueren

**Absent** 1 - Duistermars

#### COMMUNICATIONS

*No communications were brought forward.*

#### PUBLIC COMMENT

*No members of the public came forward to speak on any non-agenda items.*

#### NEW BUSINESS

2013-0248 **PUBLIC HEARING - FILE NO. 13-008**

Location: 2917 W. Auburn Rd., located on the south side of Auburn, between Hartung St. and Willet Ave., Parcel Identification Number 15-32-101-032, zoned R-4 (One Family Residential).

Request: A request for a variance from Section 138-10.102A (Detached Accessory Structures) of the Code of Ordinances, which states that accessory structures shall not be located in the front yard. A detached accessory structure is proposed to be located within the front yard.

Applicant: Dean White  
2917 W. Auburn Rd.  
Rochester Hills, MI 48309

*(Reference: Staff Report dated June 27, 2013, prepared by Jim Breuckman, Manager of Planning, and associated documentation were placed on file in the Planning and Economic Development Department and by reference became part of the record thereof.)*

*Chairperson Colling read the request for the record, invited the applicant to come forward to the presenter's table, state his name and address for the record, and provide a brief summary of the request.*

*Mr. Dean White, 2917 W. Auburn Road, Rochester Hills, MI, came forward, introduced himself and summarized his request. He is trying to get a pole barn garage in his front yard. He has lived there for 20 years, and when he purchased the property it was vacant and a dump site. He has turned it into a nice piece of property, working the whole 20 years on the back yard. There are two ponds, a river, sidewalks, and a nice deck - it's like a park. He doesn't do anything in the front yard, which is a vacant acre. It is flat at the top of the hill for easy access of his wheelchair. The barn would be out of the way where it is proposed and not in the middle of the back yard. The one area in the back yard where the garage could be built is on a slope. It would cost more money to build it back there, and then it would be located where he has been working for the last 20 years. He does not feel it will bother any of his neighbors as it would be in their back yards. One neighbor that it may bother is present tonight, but the barn will be sitting behind their garage, so it shouldn't be an eyesore to them. The neighbors to the west have a very narrow walkway and a privacy fence.*

*Chairperson Colling asked for a summary of the staff report.*

*Mr. Breuckman commented that a dimensional variance request requires finding a practical difficulty. An explanation of the five criteria necessary for making a finding of practical difficulty starts on page two of the staff report. 1) "Compliance with the strict letter of restrictions will unreasonably prevent the owner from the using the property for a permitted purpose" -- the property is quite large and there is room to accommodate the pole barn elsewhere on the site. However the property owner has made substantial improvements in the rear yard which could be impacted or destroyed by locating the garage to the rear of the house. 2) "Granting the variance will do substantial justice to the applicant as well as to other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to the other property owners in the zoning district" -- the*

proposed barn would comply with the maximum area restrictions so the applicant is only asking to locate the structure in the front yard. The subject parcel is a flag lot and the applicant's front yard is located behind neighboring lots having standard frontage on Auburn Road. The proposed barn would be located to the rear of all neighboring lots, so that could support a finding that the spirit of the ordinance is being upheld and that substantial justice would be done, because the barn, in what is the front yard of the subject lot, would actually be behind the garages on the lots in front of the subject lot. The barn is proposed to be located in what amounts to be the side yard of the house to the west because of the staggered frontage. The Board can require conditions or improvements to mitigate the effects of a variance if they choose, i.e., planting landscaping along the west side of the barn to supplement the existing landscaping. 3) "The plight of the applicant is due to unique circumstances of the property" -- The property is a flag lot, which is an uncommon circumstance. The barn would be located in the rear yard of the houses located on the standard lots that front on Auburn. 4) "The problem is not self-created" -- the problem could be considered self-created in that there is room to place the garage to the rear of the house, but that is not appealing to the applicant due to the improvements he has made in the rear yard. The house also has an attached garage. 5) "The spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done" -- granting the variance will allow for a detached accessory structure in a front yard. Consideration of a variance must always take into account the potential for the variance to spur similar requests on surrounding properties. Granting this variance could spur similar requests on flag lots, but it is unknown how many such lots exist. This is really the unique circumstance in this case, separating this lot from almost all other residential lots in the City. Mr. Bob White from the Building Department who worked with the applicant processing the application is here and will answer any questions the Board may have.

Chairperson Colling opened the public hearing at 7:13 p.m.

**Matthew and Stephanie Thomas, 2925 West Auburn Road, Rochester Hills, Michigan 48309**, came forward and stated they live directly in front of the applicant. They have been doing extensive work to their home since they purchased it. Ms. Thomas indicated they have had problems with the applicant and have tried to be civil. Her paperwork indicates a shared easement for the driveway. They have only a small spot to get to their house and the applicant put up a fence all the way down the easement. She indicated they can't use their garage because they can't turn in because of the fence. If the Board is inclined to grant the variance, Ms. Thomas would like ample time to get an accurate survey of her property completed because she was told her property extends beyond the fence and beyond her garage; where the applicant proposes to put the pole barn. She does not want to look at the applicant's barn out her window.

Chairperson Colling indicated as far as the easement goes, the applicant may own the property and the easement may be for the Thomas' right to use it - but he doesn't know. He strongly suggested the Thomas' check their deed to find this out.

*Chairperson Colling closed the public hearing at 7:21 p.m. and opened the floor for Board discussion.*

*Mr. Koluch asked if the structure will face west to east as opposed to north to south and if a driveway will be built.*

*Mr. White explained the entrance would be from the east, and the back of the building will be towards the west. There is a driveway in front of area now, but 15 more feet will be required to get into the barn. The structure will be 30 feet from the neighboring property line directly behind the Thomas' garage. If this is part of the neighbor's property, he has been mowing and taking care of it for the last 20 years - nothing has been said about this issue before tonight's meeting. Mr. White commented he has to view their garage every day. He put a fence up on his property as no one lived in the neighboring house at that time.*

*Chairperson Colling noted his issue is - does the proposed barn affect the neighbors around the applicant. The lot may be unique, but the Board has an obligation to other residents in the City to be consistent in decisions made. A similar case was heard a few months ago about a play structure in the front yard. The neighbor objected, and the variance was denied. Mr. Colling asked why, after 20 years of living there, does the applicant suddenly need a pole barn. There are undeveloped areas in the back yard where a pole barn could be built.*

*Mr. White explained there is only one location in the back yard to build the barn, but it is on a hill. He indicated he asked the City if he could do this in the first place, and they said it wasn't a problem. He spent money preparing the site - and now the City said he can't build it there.*

*Chairperson Colling asked the applicant if he submitted an application for approval showing the location of the barn. Mr. White replied he did not submit an application, he only talked to someone over the phone. Mr. Colling stated that the applicant did not receive permission to build the barn where proposed.*

*Mr. Colling then pointed out on an aerial photograph where the barn could be located in the back yard. The applicant indicated this was a hill and invited staff and the Board out to inspect the area. If there is a property dispute, Chair Colling indicated he does not want to issue a variance until the property lines are correct. If the title dimensions on the Thomas' paperwork indicate that some of the property where the barn is proposed belongs to them, Mr. Colling does not want to grant a variance.*

*Mr. Breuckman suggested if the Board is amenable to considering granting the variance, make it a condition that first a survey be conducted to stake the property lines. If the variance is not granted, there is no need for a survey.*

*Chair Colling reiterated he feels this is self-created. Even though it gives the applicant the enjoyment of his property, if it's going to be a problem for the neighbors, he does not want to grant the variance.*

*Mr. White indicated the problem here is the fence, which is the only reason the neighbors are present.*

Mr. Kochenderfer thanked the applicant and neighbors for coming before the Commission. If he were the applicant, he would rather have the barn in the front yard also, but he is concerned about the precedent it sets even if there are only a few lots in the City that are shaped like this. If neighbors object, the Board can't determine what their motives are, only that they have concerns about it being constructed. He is stuck on the idea of self-creation and the precedent it will set.

Ms. Brnabic asked the neighbors if they had a survey done before they purchased the home, to which they replied there is not a survey on file with the City and they were not given a survey at the time of purchase. Ms. Brnabic then asked how long they have lived there and whether they had questioned the fence that prevented them from using their garage. Mr. Thomas replied he's been the house since the summer of 2010 and they did question the fence with the seller. The fence was not there when the seller lived there. He doesn't mind the fence being there, but it was not put up properly, and just wants to know where his property lines are.

Ms. Thomas explained the side of her house faces the road, so as she looks from her deck she will see the pole barn. She does not want to look at a barn when sitting on the deck.

Mr. Koluch asked the Thomas' how tall their garage is. They replied the garage is not new and is 8-feet tall, so the 10-foot pole barn would be visible behind it.

Mr. Verschueren asked if the barn has to be as big as proposed and why there was no survey included in the packet. Until he knows where the property lines are, he can't make a decision.

Mr. White indicated he already has a garage that he parks his van in. He also has a bobcat, a very large lawn mower, a truck and a trailer that won't all fit in the garage with the van. That's why he is building a pole barn.

Mr. Verschueren stated this situation is self created and variances can't be granted for this. He can't make a decision without having all the facts, and the Board does not have all the facts. If a vote is called for, it will be for denial.

Mr. McGunn asked what prevents the barn from being on the west side of the house. Mr. White stated that is where the septic field is located.

Mr. Colling asked for clarification of the west side of the house - is it directly west or the back of the property to the west.

Mr. White said to get to the rear of the west side of the backyard, he would have to cross the river with all his equipment.

Chairperson Colling is still concerned about setting a precedent. He is somewhat concerned about the lot line issue from the standpoint that it is relevant to the placement of the garage. Granting a variance based on the information available today could create a more non-conforming situation. He

*asked if the barn will be 30' x 30' as shown in the packet..*

*Mr. White replied that he was told the 30' x 30' size was too large, so he now proposes it at 24' x 24'.*

*Mr. Bob White clarified the applicant originally proposed a 1,200 square foot pole barn. Staff told him he has 870 square feet to work with because he has over two acres.*

*The Chair suggested the Board receive accurate data - actual plans for the size and location of the structure, before a decision is made.*

*Mr. Bob White clarified that the applicant actually has 920 square feet to work with, so a 30' x 30' barn would meet the ordinance requirements. The maximum height is 18' measured to mid-gable and it must be 20 feet from the property line.*

**MOTION** by Verschueren, seconded by Koluch, in the matter of File No. 13-008, that the request for a variance from Section 138-10.102A (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to allow a detached accessory structure in the front yard, Parcel Identification Number 15-32-101-032, zoned R-4 (One Family Residential), 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 governing the location for detached accessory buildings will not prevent the owner from using the property for a permitted purpose in a reasonable manner, and will not be unnecessarily burdensome.*
- 2. Granting the variance will not do substantial justice to nearby property owners as it will allow a detached accessory structure in the front yard. Thus, the variance would confer a special benefit on the applicant that is not enjoyed by neighboring property owners.*
- 3. There are no unique circumstances of the property that necessitate granting the variance.*
- 4. The circumstances are self-created by the applicant in the form of his desire to construct an accessory structure in the front yard.*
- 5. 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.*
- 6. The granting of this variance could encourage further incursions upon the Zoning Ordinance which would result in further variances being considered by the Zoning Board of Appeals and could be construed as removing the responsibility of meeting the Zoning Ordinance from applicants and those wishing to build similar structures within the City.*

7. *The granting of this variance would be materially detrimental to the public welfare or existing or future neighboring uses.*

8. *Approval of the requested variance will impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, and/or impair established property values in the surrounding area.*

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

**Aye** 6 - Brnabic, Colling, Kochenderfer, Koluch, McGunn and Verschueren

**Absent** 1 - Duistermars

## **ANY OTHER BUSINESS**

*Mr. Breuckman updated the members on the M59/Crooks Business Park sign issue. He met with the shopping center owner, Mr. Al Santia and a representative of the Business Park on site to try and come to an amenable agreement between them. Mr. Santia has agreed to a sign that was half the height of the existing sign, but does not agree with the five year time period for it being there. So, this issue will be coming back to the Board at the next meeting where we have other business. The request will be for you to reconsider the variance should you so desire, based on the fact that Mr. Santia's email did not get to us on time for the original meeting. Minutes from when the variance was first granted five years ago should be included in the packet when this returns before the Board.*

## **NEXT MEETING DATE**

*Chairperson Colling reminded the members the next Regular Meeting is scheduled for August 14, 2013.*

## **ADJOURNMENT**

*Hearing no further business, and upon motion by Verschueren, the Chair adjourned the meeting at 8:05 p.m.*

---

*Ernest W. Colling, Jr., Chairperson  
Zoning Board of Appeals  
City of Rochester Hills*

---

*Sandi DiSipio, Recording Secretary*