

2011-0367

PUBLIC HEARING - FILE No. 99-028

Location: 2020 S. Rochester Road, location on the southwest corner of Rochester and Hamlin Roads, Parcel Identification Number 15-27-226-012, zoned B-5, Automotive Business.

Request: A request for a variance of 40 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, to reduce the required 50-foot rear yard setback from the west and south property lines to 10 feet. The purpose of the request is to accommodate the demolition of the existing gas station building and the construction of a new building on the site. The existing gas pumps and canopies are proposed to remain in their current locations.

Applicant: Tarek Gayar
GS Gas, Inc.
24472 Northwestern Hwy.
Southfield, MI 48075

Chairperson Colling read the request into the record, and asked the applicant to come forward, introduce himself and explain his variance request.

Mr. Tarek Gayar, President of GS Gas, Inc., 24472 Northwestern Hwy., Southfield, MI, the applicant came forward and complimented staff administration on their research and presentation of a very professional staff report, one of the best he has seen. He explained he is in the gas business and purchased the property on the corner of Hamlin and Rochester almost a year ago believing it was a good corner with enough traffic to support his business. Mr. Gayar indicated the store is not generating any income, in fact it operates at a loss of approximately \$2,000 per month. This puts the applicant behind with his lender. The only way out of this deficit is to enlarge the store. He approached lenders and put together business plans and financial studies. The only way to satisfy the lenders and be able to make the payments is to realize higher sales out of the store. The oil company controls the sale of gas and this is becoming a penny business. The profit margin on the gas barely pays for the utilities to keep the business open. What pays the rest of the expenses, payroll included, is the C-store. The structure today is no more than a kiosk fitting three people at a time and not enough items to sell to sustain the business. There are a lot of beautiful buildings located in the intersection around this gas station. The station is an eyesore, is not attractive or convenient, and does not invite customers. Mr. Gayar feels it is important to beautify the site and bring it up to code. To satisfy the lenders and to accommodate building codes, Mr. Gayar is asking for a 15 foot variance to allow the rebuild of a larger structure with a 10 foot rear yard setback. He originally hoped for a zero setback, but understands the City's code for greenspace and setbacks. The applicant's architect is on his way with renderings of the new building.

Chairperson Colling asked the applicant if there are other practical difficulties making the subject site different from other sites in the City, other than the financial hardship mentioned above.

Mr. Gayar explained the building does not look good at all, and is an eyesore to the customers, the City and to him as the owner. He wants to build a new structure with a nice facade, and to beautiful the corner, but needs relief from the setback requirements. Ten years ago, money could be made just from the sale

of gasoline, the C-store was not important. Back then, the station was properly paying it's mortgage normally. Now, there is hardly any profit from gas sales.

Chairperson Colling indicated he understands, but is looking for an indication of a need for substantial relief in terms of competition - why is the site unique? He then turned the discussion over to staff.

Mr. Breuckman summarized the staff report. There are a few attachments to the staff report for additional information - one is the colored chart/table, a survey of all the B-5 zoned stations in the City. The other is a graphic showing the expansion potential on the subject site with the 25 foot setback as well as the requested 10 foot setback. The table of B-5 properties is sorted by site area from smallest to largest. The subject site is the sixth smallest B-5 zoned site in the City and the fifth smallest gas station site. The table is color-coded to show the non-conforming situations where there is an existing building that doesn't conform with ordinance standards. Nearly every B-5 zoned site has a nonconforming status. Right now, in the B-5 district, a front yard setback is required from any street frontage. The subject site is a corner lot, so front yard setbacks of 75 feet are required from the north and east property lines, and rear yard setbacks of 50 feet are required from the west and south property lines. Footnote "j" to the schedule of regulations does allow the Planning Commission to reduce the rear yard setback to 25 feet where the property lines abut a non-residential zoning district. The applicant is requesting a 40 foot variance from the 50 foot setback, which if granted, would allow the construction of a new building with 10 foot rear yard setbacks. This issue was taken to the September 6th Planning Commission meeting for discussion to gauge the Commission's interest about granting the reduction to a 25 foot rear yard setback. The minutes from that meeting are attached to the packet. Of the members who were present, the Planning Commission unanimously expressed their willingness to go with a 25 foot rear yard setback. This is not binding, but it does lend a reasonable expectation that should the ZBA grant a 15 foot rear yard variance, the Planning Commission would reduce the setback to 25 feet, and then the applicant would have their 10 foot ultimate setback from the rear property lines. With that, the Board could reduce the variance granted from 40 feet to 15 feet and have the same effect of a 10 foot setback from the property line.

Mr. Breuckman reported that the property was initially developed in 1970. In 1970 there were only three "B" zoning districts - there was no B-4 or B-5 at that time. From the table you can see that the site, as it's developed today, easily complied with all of the requirements of the zoning ordinance at that time. The fact that the lesser setback requirements were in place meant that in the past you could have a much smaller site to support a gas station and still meet the setback requirements. So, there are many smaller parcels that exist where gas stations are located than are feasible today. With the setback requirements of today, a larger parcel is needed to accommodate a gas station. In 1977, Avon Township adopted a new zoning ordinance which included the B-4 and B-5 zoning districts - which have the familiar setbacks of 75 feet from any street and 50 feet from a rear yard. When the zoning ordinance was amended in 2009, the Planning Commission was given the ability to reduce rear yard setbacks to 25 feet because this is not the first gas station wanting to do work and not being

able to because of the setback requirements. Most of the gas stations sites in the City are very old and there has not been a lot of reinvestment over the years, mostly because it's not feasible to expand the buildings within the current setbacks.

By way of analysis, Mr. Breuckman explained that nearly all gas stations in the City are non-conforming with respect to one or more of the dimensional requirements of the ordinance and it is clear that most gas stations in the City were developed prior to the existing B-5 dimensional standards being in effect. The requested 10 foot rear yard setback is comparable to the existing side and rear yard setbacks to a number of existing gas stations in the City as evidenced in the table/chart. This request would not represent a unique or precedent-setting situation - the precedent already exists in the City. The variance would provide substantial relief to the applicant in light of the Planning Commission's discussion. The plight of the applicant is due to circumstances that are unique to all sites that are zoned B-5 and that were developed prior to 1977. The applicant does wish to replace a functionally obsolete commercial building with a contemporary and economically viable building.

Chairperson Colling asked if the ZBA decides to grant the variance, could a condition relative to Planning Commission's approval to reduce the setbacks to 25 feet be placed on the approval. Mr. Breuckman explained the Board could place a condition on the approval, but it might be a moot issue. Even if the Planning Commission grants the setback reduction, if the variance is not acted upon or the structure is not built within one year, the variance lapses.

The Chairperson declared the public hearing open at 7:21 p.m., calling for proponents and/or opponents who wished to speak.

Brian Bonkosky, 175 Boyken Rd., came forward and said he lives one street over from the subject property. He submitted an aerial view of the subject property and explained there is a house in the subdivision that has a fence/wall along the property line, which is the original lot line from when the land was platted back in the 50's. There was a question if the subject property extended all the way to that fence and if the variance would allow something to be built within 10 feet of the fence. Mr. Bonkosky now understands that Walgreens owns the land behind the subject property, so he is no longer concerned and has no objection to the requested variance.

There being no further comments, the Chairperson declared the public hearing closed at 7:25 p.m. and opened the floor to Commissioner comments.

Ms. Brnabic asked if the dumpster location will be moved. Mr. Gayar explained the dumpster will be moved to the far south side. This location provides ample access for truck travel and pick-up. A gate will also be provided around the dumpster.

Ms. Brnabic then asked if fire truck access on the south side of the building would be provided through the Walgreen parking lot. Mr. Breuckman clarified that a concept plan meeting was held with the applicant. The Fire Department had a chance to comment on the plans. Given the fact that there is a

Walgreen's parking lot that wraps around both sides, the Fire Department was comfortable with the site layout.

Ms. Brnabic commented that right now there is a second doorway through the building in the back and asked if the new building will also have a second access door. Mr. Gayar confirmed there will be a second doorway in the new building. Ms. Brnabic asked where deliveries occur. Mr. Gayar advised that grocery delivery will normally be through the front door. Chairperson Colling clarified that all deliveries must occur on the property owner's lot, not through Walgreen's property, so all deliveries will be through the front door once the new building is constructed.

Mr. Gayar explained that trucks delivering gasoline enter off Hamlin Road and exit to Rochester Road. He also indicated that the second driveway off Hamlin Road closest to Rochester Road will be closed off. This will reduce accidents and inconvenience on the street.

Ms. Brnabic questioned if the parking will remain on the north side of the site. Mr. Breuckman explained the staff has not reviewed a site plan yet, but the concept plan that was reviewed had plenty of parking. There is no parking problem on the site.

Mr. Duistermars commented that without the variance, the building envelope is too small to build anything economically viable.

Chairperson Colling asked the applicant if he would agree to a condition that all deliveries made to the store would be through the property owner's parking lot and through the front of the building. Mr. Gayar agreed to this condition. Mr. Colling still would suggest a condition that if the building is not built within one year or if the Planning Commission does not agree to reducing the rear yard setback to 25 feet, that any variance approved by the ZBA would become null and void.

Mr. McGunn asked if the size of the building was determined by an interior layout or a desire to maximize the amount of building that could be placed on site, and then work with the interior layout.

Mr. Gayar explained he is trying to please the financial lender. The feasibility study that was completed, the walk-in cooler minimum standards and maneuverability throughout the store also determined the proposed size of the building. There is a formula using projection numbers that distributors use to design the buildings; this information is shared with the lenders. Mr. Gayar indicated he was going to ask for a zero setback, but is trying to accommodate the ordinance and the professionalism of the City. He understands the need for the greenbelt to beautify the area surrounding the building.

The Board was in recess from 7:45 p.m. until the meeting was reconvened at 7:49 p.m.

MOTION by Duistermars, seconded by Verschueren, in the matter of File No. 99-028, that the request for a variance from Section 138-5.100 (Schedule of

Regulations) of the Rochester Hills Code of Ordinances to allow a 15 foot rear yard variance for a proposed building at 2020 S. Rochester Road, Parcel Identification Number 15-27-226-012, zoned B-5 (Automotive Business), be **APPROVED** because a practical difficulty **does** exist on the property as demonstrated in the record of proceedings and based on the following findings:

1. Granting the variance will do substantial justice to the applicant as well as nearby property owners by permitting a use or development of land that is consistent with prevailing patterns in the nearby areas and with existing conditions on other sites zoned B-5 throughout the City.
2. A lesser variance of 15 feet would provide substantial relief and would be more consistent with justice to other property owners in the area.
3. The circumstances necessitating the variance were not self-created by the applicant. Rather, the site was created and developed according to zoning standards in effect at the time and subsequent zoning actions by Avon Township, precursor to the City of Rochester Hills, eliminated redevelopment possibilities at this and other B-5 sites developed prior to 1977 by enacting larger setback requirements.
4. Alternatives do not exist that would allow the reasonable improvement of the property that meet the requirements of the Ordinance.
5. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
6. Approval of the requested variance will not impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.

Condition:

1. All deliveries will be accommodated within the boundaries of the site.

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

Aye 6 - Duistermars, Brnabic, Verschueren, Colling, McGunn and Koluch

Absent 1 - Brennan

ANY OTHER BUSINESS

No other business was brought before the Board.

NEXT MEETING DATE

Chairperson Colling reminded the Board that the next Regular Meeting is scheduled for October 12, 2011.