



Rochester Hills

Minutes

Zoning Board of Appeals

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Rochester Hills, MI
48309
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Home Page:
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Chairperson Ernest Colling, Jr., Vice Chairperson Gerard Verschueren
Members: Deborah Brnabic, Jim Duistermars, Adam Kochenderfer,
Kenneth Koluch, Michael McGunn

Wednesday, February 8, 2012

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

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

ROLL CALL

Present 6 - Deborah Brnabic, Ernest Colling, Jim Duistermars, Adam Kochenderfer, Kenneth Koluch and Michael McGunn

Absent 1 - Gerard Verschueren

Quorum present

Also present: James Breuckman, Manager of Planning
Scott Cope, Director of Building
Mark McLocklin, Ordinance Enforcement
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

2012-0038 December 14, 2011 Regular Meeting Minutes

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

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

Absent 1 - Verschueren

COMMUNICATIONS

- A) *Planning & Zoning News (2) dated December 2011 and January 2012*
- B) *Parliamentary Procedure Training Workshop on March 5, 2012*

NEW BUSINESS**2012-0039 PUBLIC HEARING - FILE NO. 12-001**

Location: 2460 Gerald Ave., located on the west side of Gerald, west of Dequindre Rd., north of Morley Ave., Parcel Identification Number 15-25-426-055, zoned R-4, One Family Residential.

Request: A variance from Section 138-10.102 (Detached Accessory Structures) of the Code of Ordinances, to permit a detached accessory structure in the front yard. Section 138-10.102 requires accessory structures to be located in the side or rear yards.

Applicant: David Boshnakian
2460 Gerald
Rochester Hills, MI 48307

(Reference: Staff Report, prepared by James Breuckman, dated January 31, 2012 and associated documentation had been 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, and 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. He noted that any documents or other materials submitted at this meeting would become part of the permanent record, and he asked the applicant to state his case.

Present for the applicant was Mr. David Boshnakian, 2460 Gerald, Rochester Hills, MI 48307, his daughter, and Senior Chaplain Timothy Simon, no address given.

Chaplain Simon, who stated that he was a good friend of the family and taught at the daughter's school, asked if he could speak on behalf of the applicant. He was informed that the daughter of the applicant wanted a treehouse, and he advised that he could help out with the project. He noted that he was in the building trade and knew how to make something safe, so they started to erect a treehouse. They attached the treehouse to a tree for security and added tresses for the roof, two windows and a door. He stated that he had no idea there was any type of problem with what they were doing. After they found out there was a problem, they went to 27 neighbors who signed a petition stating that they did not have a problem with it.

Mr. Boshnakian said that because of where his house was located, towards the back of the property, there was a small backyard. Underneath

part of it was an old cellar stairs for the basement that was covered. Detroit Edison took out all the trees and there was no shade. Putting a treehouse there would also put his daughter close to the telephone and electrical lines at the back of the property. The neighbor behind him had a swimming pool that came up against the fence, and he did not think they would be happy having someone looking down at them from above. The treehouse was ten feet in the air and it was six feet tall. There were two feet in the ground. The side that went towards the neighbor did not have a window, so no one would look into the upstairs room. He thought it was the only spot on his property where it would work. He stated that they wished to get a Variance for a couple of years, until his daughter was older and did not want the treehouse any longer.

Chairperson Colling asked if there was anything he wanted to add. Chaplain Simon said that Mr. Boshnakian's daughter would tell people that she really liked her treehouse. His daughter spoke for the record that she liked it.

Chairperson Colling opened the Public Hearing at 7:07 p.m.

Kim Dietlin, 2450 Gerald Ave., Rochester Hills, MI 48307. Ms. Dietlin said that she did not mean to seem harsh toward children and their treehouses - she had four children and four grandchildren, so she was empathetic. It was the location, right on the property line where her driveway was, and on the other side of that was her house. When she looked out her bedroom window, the treehouse was right there, and there was no privacy. She did not know if it was structurally sound and if it were to fall her way, she was concerned it could come into her house and damage it. She added that whether it hit the house or not, it would come into her driveway. She stated that she was never asked if it was o.k. for the treehouse to be built where it was, and she was never asked to sign a petition saying it was o.k. She checked online as to how it would affect the value of her home, and it appeared that it did downgrade the value of her home based on the look of the structure. She was told they were going to paint it purple, and she stated that would look hideous. She said that there was not a Building Permit, and it violated code because of its location. She felt that when someone violated laws, and came after the fact and asked for an excuse because a child was involved, she did not think that was a good lesson for a child to learn. She concluded that she was not in favor of it.

Chairperson Colling closed the Public Hearing at 7:10 p.m. and turned the meeting over to Mr. Cope, who had prepared a power point.

Mr. Cope indicated that he had put some slides together to explain how they had looked at accessory structures/play structures in the past, and he showed examples of others in the City. The answer to the question of whether or not it was an accessory structure was clearly stated in the Ordinance that it was. The Building Department's interpretation had always been to try and apply the code in a fair, reasonable and practical manner. If they placed requirements on all play structures, there would be a lot of limitations and a lot of people who could not have them, either due to the square footage limitation of 720 feet for accessory structures or the lot coverage. They looked at them as to location - if they were in the side and rear yard as required; the setback of being five feet from the side or rear property line; and the maximum height of 16 feet. They had not looked at lot coverage or how it fit into the total square footage of the property.

Chairperson Colling clarified that they were only enforcing the side yard and rear yard setbacks and not looking at accessory structures for total square footage or yard coverage. He asked if they were trying to be a little more lenient to allow play structures for kids. Mr. Cope said they were. They purposely had done that, because oftentimes, if people put in a 720 square-foot garage, they would not be able to have a play structure, and that did not seem reasonable. It had worked well for at least the 20 years he had been with the City.

Mr. Cope showed a picture of the subject play structure in the front yard. Chairperson Colling asked if the trees to the right of the picture were on the lot line. Mr. McLocklin said it would be very close.

Mr. Boshnakian said that the property line was basically the edge of his house. Chairperson Colling asked if his house was built on the lot line, which Mr. Boshnakian believed was true. Chairperson Colling asked if Staff had a drawing showing that. Mr. Breuckman advised that there was an aerial provided on page two of the staff report that outlined the property lines. The play structure did not exist at the time the aerial was taken.

Chairperson Colling asked the board if they had any questions or comments.

Mr. Kochenderfer recalled that the applicants came before City Council a little while ago, and he thanked them for doing that. He had been talking with Staff and reviewing the packet. He commented that the last thing anyone wanted to do was deny an eight-year-old a place to play. They

had to take into consideration the precedent they would set, the neighbors, the community and also safety. He was a little concerned about the height. He asked if there was any way they could put the structure in a modified version in the back yard and have it be safe and not intrude into the neighbor's space. He realized it would not look exactly the way it did currently, but he would like to find a solution in the back yard somehow.

Mr. Boshnakian said that to not offend the neighbor behind him, it would probably have to be almost two feet off the ground, because the neighbor would complain they were watching them swimming, and it would have to be away from the electrical wires.

Chairperson Colling asked Mr. Boshnakian to indicate on the drawing where the electrical service was on his roof and where the pole was. Mr. Boshnakian came to the dias and indicated with the pencil where the electric box, cable and pole were, and Chairperson Colling passed it around to the members.

Chairperson Colling thought that the treehouse was at 16 feet or over, and if it was over, it needed to be taken care of. He indicated that there was kind of a unique circumstance due to the obstructions in the backyard. He asked if there was a septic in the back or front yard or if Mr. Boshnakian was connected to City water. Mr. Boshnakian responded that he did not have a septic; he had a well in his basement. Chairperson Colling believed there were a couple of options. He asked if Mr. Boshnakian's side yard would be considered anything past the front of the house, which was confirmed. Chairperson Colling clarified that there was an unpaved driveway, and he saw the potential for putting the treehouse on the side yard. There was also a section of land next to the house, which would be past the neighbor's line of sight and the neighbor behind would not see it. He also saw an option in the backyard where there was a concrete pad. Chairperson Colling felt it was possible to sink some anchors into the concrete and put the tree house next to the garage. If there were no windows on the north side, he thought it was possible and it would appease the neighbor with the pool. It might have to be lowered four feet or so. He said he did not want to deny Mr. Boshnakian or his daughter the same rights they gave anyone else in the City, and he knew Staff would work with him to come up with a plan that worked. He stated that they had the same rights to enjoy their property as anyone else. Even if it were just a bare swingset, however, he did not think people would want to see it in the front yard. There was a unique circumstance in that the home was more towards the back of the lot, but Mr. Boshnakian would

have to compromise with Staff to find a location where it would work. If he was willing to work with Staff and relocate the tree house, he could keep it. Chairperson Colling asked Staff if it could be put anywhere in the backyard, and Mr. Cope said it could be as long as it was five feet off the property line. Chairperson Colling said he would even be willing to work that out if necessary, or overlook it, because of the unique circumstance of the lot. He said he just wanted it out of the front yard.

Mr. Breuckman agreed Mr. Boshnakian would not have an issue with the side lot line if he put it between the driveway and the house.

Chaplain Simon stated that he knew Mr. Boshnakian wanted to get along with his neighbors. He asked Ms. Dietlin if that would be a good compromise. He explained the location to her, and she said she just did not want it against her house, and she agreed the side yard would be a good solution.

Chairperson Colling explained that they did not want to set a precedent, and at the same time, he wanted them to enjoy property rights. He asked Staff if the best way to handle it would be for the applicant to agree to work with Staff and withdraw the request. Mr. Cope said that was how it was handled in the past, when there had been other options, and they would be more than willing to work with Mr. Boshnakian. Chairperson Colling pointed out that they needed to measure it to make sure it was not over 16 feet. Mr. Boshnakian said that to be honest, at ten feet off the ground, with six-foot walls and the pitch, it was above 16 feet. Chairperson Colling observed that it would be safer for his daughter to be lower. He said he could not instruct Mr. Boshnakian, but the better method would be to withdraw, because a vote would probably result in a denial.

Mr. Boshnakian stated for the record that he wished to withdraw his Variance request, and that he would work with the City to see best where the treehouse should be put. He asked about a ticket he got, noting that the court date was put off until the ZBA meeting. Chairperson Colling asked if, in light of the fact that Mr. Boshnakian would work with Staff, they could eliminate the ordinance violation. Mr. McLocklin said that would not be a problem; they were waiting for a decision of whether to remove or allow it. Chairperson Colling said he would like to give the applicant a little time to move it due to the weather.

Chaplain Simon assured that he would finish the project in a timely manner. Mr. Boshnakian said that it would most likely be in late spring. Mr. McGunn thanked Ms. Dietlin as well, noting that it was very difficult to

come forward, and he said that the members appreciated the input. Mr. Duistermars also appreciated that they could come to a good solution.

UNFINISHED BUSINESS

2011-0314 ZONING ORDINANCE - Concrete/Steel Deck Interpretation/Discussion

Mr. Cope recalled that at a meeting last year, the Zoning Board of Appeals started some discussion about concrete/steel decks and how they should be reviewed from an Ordinance standpoint. Upon request, he put together a slide show of decks around the City. He thanked Mr. Spencer from Bella Homes, who was in the audience and had provided several of the pictures. Mr. Spencer also had a stake in the matter, because the last concrete/steel deck shown was on one of their homes, and it had been constructed in violation of a rear yard setback. Mr. Cope hoped the board could determine if the concrete/steel deck was an addition or an accessory structure. Accessory structures required a five-foot setback from the property line, and additions were required to comply with setbacks for the principal building and lot coverage. That meant that the side yard setbacks would be 10-15 feet, depending on the zoning district and 35 feet for the rear yard. There were some exceptions, such as in open space subdivisions, but generally those were the setback requirements. Lot coverage allowed was 25 or 30%. The answer about whether it was an addition or accessory structure would determine how close the deck could be to the side and rear property lines, and it would have an impact on the lot coverage.

Chairperson Colling asked Mr. Cope if he could state which decks were in compliance and which were not, and Mr. Cope advised that they all were in compliance and approved, except the last one. He explained that the Building Department was trying to determine the best way to look at the structures in accordance with the Ordinances to see how they compared with a wood deck. The biggest difference in the two was the amount of open space underneath each. He added that the supports for concrete were a lot larger.

Chairperson Colling said that he was not as concerned about the supports. He noted that in each case Mr. Cope showed, there was not one that was not a second story deck and there was a full story underneath for people to walk.

Mr. Cope said that the biggest impact with concrete/steel decks was when

they came off of a first floor with a walkout basement, and the majority were done that way. He mentioned some things to consider: Concrete/steel decks were made of steel columns, beams, masonry and concrete; the concrete floor did not allow water to pass through like a wood deck - he questioned whether it should be considered a roof structure; the structure was more permanent in nature than a wood deck; concrete foundations were capable of supporting an additional structure or addition above; and the impact on the neighboring properties - the height, size and amount of open area under the deck. The current Ordinance indicated that attached and detached decks were accessory structures. In the same section it talked about roof structures and read that "any that were open less than 50% and located within 10 feet of the principal structure shall comply with the setback requirements of the principal building."

Chairperson Colling clarified that the term "located within 10 feet of the principal structure" meant that it could be detached or attached from the principal structure. Mr. Cope agreed. Chairperson Colling wondered about someone building a free-standing gazebo six inches or a foot from the home and if that would meet the requirement, or if it would be considered within 10 feet of principal structure and meet setbacks. Mr. Cope said that a gazebo was a little different, and he had not looked at that section. Chairperson Colling said that he was trying to imagine a structure within 10 feet of the principal structure which had a roof better than 50% covered that did not attach to the house.

Mr. Cope suggested that someone might want a deck that was not attached and a few feet away from the house. They could put a trellis system over it and there would be less than 50% roof coverage. It would also apply to garages. A garage within 10 feet of the home was required to comply with the setbacks for a principal structure. It would be close enough that its impact on the neighbors would be similar to that of an attachment.

Mr. Cope related that the Ordinance did define a roof structure now, which helped some, but the Building Department's interpretation of concrete/steel decks was that they were reviewed as additions that added to the lot coverage and had to meet setback requirements of the principal structures. He asked the members if those types of decks should be reviewed as additions or accessory structures.

Chairperson Colling stated that he did not care what materials the deck was made out of; it might be a more permanent structure. He had also

seen where people tiled their wooden deck, and the City did not go after them for that. He noted that decks were always slightly sloped for water runoff, so the fact that a concrete/steel deck was waterproof was pretty immaterial to him. As far as the area underneath the deck, it depended on the height of the house and the gradient. There were a number of wooden decks in the City that did the same thing as the concrete/steel decks. The only difference was that the person involved with the subject deck invested a lot of money, and he would not have to rebuild or resurface it in 20 years. He would agree with Mr. Cope's assessment if there was a permanent roof structure that exceeded 50% of the area of the deck. If less than 50% of that were open, it would no longer be an architectural projection; it would be a roof. It would then have to meet setbacks and if a deck was already built and did not, there would be a problem.

Mr. Cope asked Chairperson Colling if he would view the subject deck as an addition. Chairperson Colling corrected that he would look at it as a deck. Mr. Cope clarified that he would not consider the fact that there was a full story underneath it with a roof above. Chairperson Colling agreed he would not. Because there was no roof above the actual deck area, the deck was the area enclosed by the railing. There was an area underneath the deck. The owner chose to have a second story deck, and they chose to make it very sturdy so it would not fall, and he did not have a problem with that. He reiterated that if the upper deck had a roof over it that enclosed more than 50% of the area, he would call it a structure.

Mr. Duistermars said that it was fairly evident that a roof was constructed differently than a deck. If they enclosed the bottom (under the deck), he asked if that would be considered a structure. Chairperson Colling agreed that if they enclosed the bottom and made it into a room, it would be a different story. The subject deck was not enclosed. Mr. Duistermars agreed. Chairperson Colling said that if someone put lattice on and screened in a wooden deck that was elevated, and added a door for access, the City would call it an accessory structure, and the same would apply in this case.

Mr. Duistermars said that would be his standards. It was obvious that the deck was constructed to have people on top of it, not to shed water as a roof would. If the bottom were enclosed, he agreed that it would be a different story. Chairperson Colling gave a couple of other scenarios. Someone could add roll-down shades that would not necessarily fill the gaps, but could be used for privacy, and that would not make it a structure. If it were glassed in, as a sunroom, it would be a structure. It

was his opinion that the deck was just another means of support. It was open and not heated or air conditioned and they could store things underneath or sit underneath - the same things people did underneath an elevated wood deck currently. The key for him was a roof over the railed-in area on the top or an enclosed bottom, which would cross the line into a structure.

Mr. Cope said it was difficult from their standpoint because they did not often see an enclosure. He asked them to think about the fact that it would be allowed within five feet of the property line. They had situations where there was a desire to do that.

Chairperson Colling acknowledged that there was the potential to be within five feet of the lot line, but he thought that the reality was that those types of decks would be seen on larger homes with larger lots. He commented that he did not think he would see someone in Brooklands add that type of deck. He asked if the deck would meet setbacks if it were considered a structure.

Mr. Cope said that depending on the ZBA's determination about how the decks should be enforced, it could come back for a Variance because if considered a structure, they were in violation of the rear yard setback. The rear yard setback was required to be 35 feet, and Mr. Spencer believed the deck was about 30 feet from the property line.

Mr. Cope stated that while he generally agreed with Chairperson Colling that large decks would be built on larger homes, the reality was that there were a lot of homes that were maxed out on the percentage of allowable lot coverage. Chairperson Colling said that in this case, the homeowner was required to have a 35-foot rear yard setback and there was about a 30-foot setback, which was not that far off. He clarified that those folks could build a wooden deck the same size and in the same place, and the City would have no issue with it, which Mr. Cope confirmed. Chairperson Colling reiterated that there was no roof, and he doubted that with the windows as high as they were that the owners would ever put any type of enclosure that would cover the top. There was also a pool in back, so he did not believe they would ever make the deck any bigger. The sticking point for him was that with today's plastic building materials and synthetic woods, someone could build a deck that would literally last 100 years and never have to be pulled out. Someone could build a wooden deck with a steel post encased in wood for support and use engineered materials for the decking and there would be the same thing - a waterproof roof overhead - and it would really not be wood, but they would classify it as a

wood deck.

Mr. Duistermars agreed, and said that the part underneath was not providing any protection from the elements the way it was currently. If they added permanent screening, it would be a structure. Chairperson Colling said that he had not seen it in Rochester Hills, but in other communities he had seen a solarium, which was glassed in and which also had a deck on the top. If they ran into that being built here, it would definitely be an accessory structure. He asked Mr. Cope if they had enough information to make a determination.

Mr. Cope thought what the board had indicated was clear.

Ms. Brnabic asked if all the decks were constructed after a home was built. Mr. Cope said they were done at various stages. Sometimes they were done afterwards, but sometimes they were done as part of the home construction. Ms. Brnabic thought that there was some protection from the elements, but it was not fully enclosed, and it would not protect in the same way a home would. She agreed with Chairperson Colling's comments.

Mr. McGunn indicated that the deck could have wood planking for the surface with openings, and it would not be any different than a wooden deck. He personally felt that a brick structure was considerably more permanent than a wooden deck, and that it was a part of the building.

Mr. Koluch questioned why someone would enclose the bottom. Mr. Cope had mentioned that there were not too many in the City that would go back to be within five feet of the property line, but in Rochester, along Woodward, there were a lot of newer homes that had decks that seemed to go right up to the back line in the yard. He would be curious to see how they handled it. He concluded that he felt the subject deck was clearly a deck.

Chairperson Colling asked the board for a motion that explained the comments - that unless the bottom was enclosed or there was a roof over the top that conflicted with the Ordinances, and the construction materials were not of great importance to the definition of a deck, it was a deck. Or they needed to send a note to City Council asking them to revisit the Ordinance. Otherwise, Staff would not have the direction needed.

Mr. McGunn clarified that if the concrete/steel deck was called a deck, it could be built within five feet of the back lot line, but if it was called a

structure, it had to be 10 or 15 feet from the side yard and 35 feet from the rear.

Mr. Breuckman said that was his biggest concern. If a deck was on a walkout lot particularly, and there were neighboring houses enjoying a view and they allowed the deck to go within five feet of the property line at first floor level, the entire rear yard would be covered, basically. He did not think they had any situations like that, and the pictures they were shown showed a fairly reasonable projection from the house. However, as a Planner, he would suggest that for walkout lots, where the deck surface was raised so many feet above grade, that they allowed projection into the rear yard, but limited the extent.

Chairperson Colling said he would be fine with that if they did the same for wood decks. Mr. Breuckman commented that a wood deck could be built to within five feet of the rear property line and it would probably look worse. Chairperson Colling said that he shared the concern with a walkout basement lot, but that would be a special case and it was an addition to the Ordinance they needed. To allow people to enjoy property values and the choice of materials, he would like to call the subject deck a deck, and he recommended that Staff approach City Council about an amendment for walkouts to cover the concern. Mr. Breuckman advised that he brought it up to get the ZBA's input before they went down that road.

Mr. Kochenderfer stated that as a member of Council, he had the same concern about setbacks. He could imagine a ridiculous situation where something was five feet from the property line. He agreed it was something that Staff and City Council should take a hard look at, but for now he was fine handling it as they discussed.

Chairperson Colling observed that Mr. Kochenderfer brought up a very unique circumstance. They did have some walkouts, and if they had to protect something, they would. In the vast majority of cases, however, he felt that calling the subject deck a deck would work.

Mr. Spencer commented about a deck getting out of hand. A wood deck could go five feet from the property line, but all of the decks would have to go through an architectural review in their neighborhoods, so there had to be consensus either between the developer initially or amongst the Homeowner's Association. Going five-feet to the property line would never be allowed. Chairperson Colling reminded that not every development in the City had a Homeowner's Association. He did not

believe the likelihood was high that they would run into that situation, but if Staff needed something to deal with it, he would not have a problem with it.

MOTION by Duistermars, seconded by Kochenderfer, that the Zoning Board of Appeals hereby adopts a policy that calls concrete/steel decks "decks" with the exceptions as discussed at the meeting on February 8, 2012 (roofing cannot extend 50% over the deck and the bottom under the deck cannot be enclosed).

Mr. Breuckman said that to clarify, the provision of the Ordinance regarding roof structures stood on its own. He said that for a deck, it did not constitute a roof structure for the walkout level below. That was what allowed the subject deck to be considered a deck and not roof structures.

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

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

Absent 1 - Verschueren

ANY OTHER BUSINESS

There was no further business to come before the Zoning Board of Appeals.

NEXT MEETING DATE

Chairperson Colling reminded the board the next Regular Meeting was scheduled for March 14, 2012.

ADJOURNMENT

Hearing no further discussion to come before the Zoning Board of Appeals, Chairperson Colling declared the Regular Meeting adjourned at 8:03 PM.

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

*Maureen Gentry,
Recording Secretary*

