



# 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 Kenneth Koluch*  
*Members: Deborah Brnabic, Dane Fons, Dale A. Hetrick, Michael McGunn, Ryan Schultz*

---

Wednesday, June 8, 2016

7:00 PM

1000 Rochester Hills Drive

---

#### CALL TO ORDER

*Chairperson Colling called the Regular Meeting to order at 7:00 p.m. in Conference Room #130 at City Hall.*

#### ROLL CALL

**Present** 7 - Deborah Brnabic, Ernest Colling, Dane Fons, Dale Hetrick, Kenneth Koluch, Michael McGunn and Ryan Schultz

*Also Present: Ed Anzek, Director, Planning and Economic Development*  
*Sandi DiSipio, Recording Secretary*

#### APPROVAL OF MINUTES

2016-0223 May 11, 2016 Regular Meeting Minutes

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

**Aye** 7 - Brnabic, Colling, Fons, Hetrick, Koluch, McGunn and Schultz

#### COMMUNICATIONS

*Planning & Zoning News - May 2016 issue*

#### PUBLIC COMMENT for Items not on the Agenda

*No public comment was heard.*

#### UNFINISHED BUSINESS

2016-0191 **PUBLIC HEARING - FILE NO. 16-005**

Location: 3755 S. Rochester Rd., located on the southeast corner of Rochester and Michelson Roads, Parcel Identification Number 15-35-352-001, and zoned B-2 (General Business).

Request: A variance of 22 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a 50 foot front yard

setback in the B-2 zoning district as measured from the proposed right-of-way. A 28 foot front yard setback from the proposed City of Rochester Hills' right-of-way is proposed for a new structure, resulting in a 22 foot variance request.

Applicant: Gus Zetouna - Rochester & M59, Inc.  
2048 Michael Dr.  
Sterling Heights, MI 48310

*(Reference: Staff Report dated May 19, 2016, prepared by Ed Anzek, Director of Planning and Economic Development, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)*

*Chairperson Colling read the request for the record, and asked the applicant to provide a summary of the request.*

*Mr. Gus Zetouna, owner of Rochester & M59, Inc., 2048 Michael Dr., Sterling Heights, MI 48310 introduced himself. He indicated in 2007 he opened Zetouna's Liquor on Rochester and M59, which is next door to the subject property. He owns the business and has had an interest in the subject property for development. He could either move his store into the new building, or rent it to other tenants.*

*Mr. Jim Scharl, Keift Engineering, Inc., the applicant's engineer added that they originally asked for a 7 foot variance from what they thought was the existing right-of-way (ROW) at that time, but the City actually has a proposed recognized ROW with an additional 15 feet from the ROW that is currently there. It is also strange because it is measured from the section line rather than the center line, which are not the same. Effectively, what the applicant is asking for is to line up the proposed building in accordance with the same depth as the existing building to the south. In order to build the structure in accordance with the zoning ordinance, it would be 22 feet behind the existing building to the south and take away a lot of building space. Traveling from the south, you would not even see a building. He feels this is not an unreasonable request.*

*Chairperson Colling asked if there is a particular difficulty or hardship other than the fact that it's what the applicant wants to do on the property.*

*Mr. Scharl indicated the hardship is that it is less square footage of building, less visibility from the road and it's not in accordance with all the buildings up and down Rochester Road.*

*The Chair asked if there are any practical difficulties that prevent the applicant from building within the envelope as specified by the City.*

*Mr. Scharl responded no.*

*Mr. Colling called for a summary of the staff report.*

*Mr. Anzek explained the applicant's variance request was removed from last month's agenda because staff ran an inaccurate public notice, by not*

recognizing the City's ROW of a 180 foot total, 90 foot per side, which would be an additional 15 feet. He also pointed out that the City's desire for that ROW has become somewhat of a moot issue over time. The City has just not acted accordingly to remove it from the Master Thoroughfare Plan. Staff has looked at the building structure and offered the opinion that perhaps not being able to line up with the building to the south would be a problem for the site. The Burger King further up on Rochester Road at Winchester Mall is vacating because they are getting feedback they are not visible to traffic. They are building a new site facing Avon Road to bring the building forward, which is the City's policy now under the new zoning ordinance. Two possible motions are included in the staff report, both acknowledge the State DOT right-of-way and the City ROW, because it is his opinion, and it has been agreed to by the Traffic Engineer, that the 180 foot ROW will be removed the next time the Master Thoroughfare Plan is updated.

Ms. Brnabic asked when the property owner purchased the property, to which Mr. Zetouna responded a few months ago. Ms. Brnabic commented the owner purchased the property with knowledge of the setbacks. She noted that the building the owner currently owns south of the subject property, is considered legally non-conforming, and the Discount Tire building further to the south was built according to the setbacks. She feels updates to the Zoning Ordinance and Master Thoroughfare Plan should be done. Ms. Brnabic commented the Master Thoroughfare Plan was amended in 2008 for a five lane configuration and asked if that was the only amendment to the plan.

Mr. Anzek explained staff reviewed the plan at that time for the right-of-way and discussed that the 180 foot width was no longer desirable because based on analysis, the additional right-of-way, without the State's participation, would be equivalent to 7 million dollars in acquisition. That was not considered feasible or viable. The State made it very clear to the City that they would not participate in anything beyond 150 feet, either construction or acquisition, as that was not their plan for the road. The six lane divided boulevard stretch that was the concept in 1998-99, was a meandering approach which was designed to miss buildings. You can't do that for something that's not going to happen for 20 because it is unknown what buildings will still be around. It was discussed removing this proposed right-of-way at the time of amendment but the Steering Committee that was in place at the time wanted to keep the ROW in the plan just in case it was needed in the future. The next time the Master Thoroughfare Plan will be updated is after the Master Plan is updated in 2017.

Ms. Brnabic noted that the right-of-way has not been abandoned so the suggestion that there is a hardship because of the change in right-of-way can't be argued. If the City is considering abandoning their proposed right-of-way, something should be done. She feels that granting the variance really will set a precedent. Other structures meet the required setbacks. We have an applicant who just wants to line up his proposed new building to his liquor store to the south. She agrees that the Master Thoroughfare Plan, as well as other ordinances, needs to be reviewed and updated. She doesn't see the applicant's rationale for requesting the variance.

Chairperson Colling pointed out that when the Fox and Shelton Dealerships

came before the ZBA for setback variances, it was because they were required to remodel by their corporate franchise. Those were cases where the MDOT right-of-way could have put both owners out of business. This is entirely different from the case tonight.

Mr. Schultz knows the board has had discussions about setting precedent. When Fox came before this Board, they basically had a clean slate and had plans to redo their entire site. The ZBA could have required them to pull their parking back and adhere to the ordinance requirements, but with the Shelton Dealership next door being granted a variance, the cars at Fox would have been blocked by the Shelton building. The same thing can be said about the subject situation understanding the site is quite small and the building would not be seen if pushed back from the road. He feels the applicant would be at a financial competitive disadvantage if forced to meet the setback requirements on a road that cars travel 55 miles an hour. Mr. Schultz feels this is the hardship and a unique circumstance.

Mr. Koluch commented if the Board starts granting variances because someone wants to potentially develop a property but can't meet the setback, then every potential business that wants to expand or build can refer to this case as setting precedent. There is nothing currently on the site; the owner is not being forced to update the property like the dealerships were. The applicant can still develop the parcel without the variance and he understands it would probably look better if the variance was granted, but does not feel a hardship exists and is very concerned with setting precedent.

Mr. Colling indicated although he understands the applicant's point, there are significant differences between this case the dealerships down the road. In the case of the Fox Dealership, the tradeoff was that an extremely non-conforming building was being removed, and the variance allowed them to build on to a less non-conforming building. Both the dealerships had to request a variance because they were affected by the expanding MDOT Rochester Road right-of-way. The case tonight is truly a greenfield project - there is nothing existing on the property, there is a buildable envelope and there is no demonstrated practical difficulty other than the fact that this is what the applicant wants to do. There is no engineering reason it can't be built per the ordinance requirements. This is a substantial difference between other Rochester Road cases the Board has heard. If the ordinance was changed to not include proposed right-of-ways, the applicant could build the structure based upon the current Rochester Road existing 60 foot right-of-way. He asked if the Thoroughfare Plan is going to ignore the City's proposed right-of-way, should it also ignore the State's proposed right-of-way, as the road widening is something that may never happen. Other businesses on Rochester Road were developed respecting the proposed right-of-way, and out of fairness, you don't grant a variance to one applicant that you haven't given to others.

Mr. Hetrick asked if the building to the south of the subject property considered non-conforming.

Mr. Anzek replied yes. It was built long enough ago to fall under the 60 foot right-of-way requirement.

*Mr. Hetrick explained what the Board is getting to is a suggestion or request for a change to the ordinances and the Master Thoroughfare Plan, because the way it's playing out, it is nearly impossible to show a practical difficulty. If the Board was not dealing with proposed right-of-ways, the variance would not be needed. The best thing to do is correct the ordinances.*

*Mr. Anzek added that most of the land on Rochester Road is zoned for Flexible Business. Flexible Business 3, which is less intense, allows buildings to be built seven feet off the right-of-way. Unfortunately for this case, the Flexible Business zoning was not applied to properties south of M59. Rezoning these properties in the Master Plan might be the thing to do. He does not want to put the ZBA in the position of trying to grant a variance to meet a zoning standard that is not yet on the books.*

*Mr. Colling stated if the Board grants this variance, that precedent applies all over the City, not just on Rochester Road. We would have granted a variance simply to meet the desire of an applicant where there is no demonstrated practical difficulty. The ZBA would be doing that to get around a flaw in the zoning ordinances. That creates a situation that leads to potential variances in any other area of the City that has the same potential. There are other areas in the City that are similar. There are not enough unique circumstances with the subject property to grant the variance.*

*Mr. Hetrick commented that updating the Zoning Ordinance and the Master Thoroughfare Plan would give the applicant the flexibility to build the property as designed.*

*Mr. Anzek indicated the Planning Commission could consider the Flexible Business overlay for Rochester Road properties south of M59 down to South Boulevard.*

*Mr. Schultz understands the application may not meet the ZBA's expectations of a hardship, but the Board is here to interpret the application.*

*Mr. Colling stated that historically the ZBA looks for a practical difficulty in engineering or topology, something that is not self-created. Something that can't be overcome without a variance. Unfortunately, if this is what the Board has held to in the past, that is the standard he holds to in the current situation. He feels rezoning the property south of M59 to Flexible Business makes sense as it will be needed for redevelopment. He suggested a recommendation be made from the ZBA to the Planning Commission that they rezone the properties on Rochester Road between M59 and South Boulevard to the FB-2 Flexible Business Overlay in order to institute that standard.*

*Mr. Anzek indicated that would not be far of a stretch because 90% of Rochester Road already has the Flexible Business. This would make it consistent. The discussion to lay the rezoning groundwork could occur at the June 21st Planning Commission meeting.*

*Mr. Hetrick asked when the applicant wants to start the project.*

*Mr. Zetouna responded as soon as possible. He added that the reason he is asking for the variance is that cars travel 55 mph on Rochester Road, and he does not have good visibility from the road. If the variance is not granted it will be difficult for any business to use this corner lot. This is a prime location, but he does not have frontage on Rochester Road itself. He also has to pave Michelson all the way to the entrance of his property.*

*Mr. Scharl asked how the Flexible Business 2 overlay would help them.*

*Mr. Anzek explained the FB-2 is a hybrid form-based code approach to zoning. Instead of dealing with the use of the property, you deal with the building that sits on it. FB-2 promotes walkability, and by doing that you try to bring the buildings closer to the street to eliminate the pedestrian and car conflict movements by separating the cars, parking them in the back or to the side. Some of the new development at Rochester and Auburn used the FB-2 provisions to get the buildings more to the front and the parking behind.*

*Mr. Scharl then commented if the variance fails tonight, effectively 22 feet of buildable area would be removed. Because of the configuration of the site and its small amount of frontage on Rochester Road, the property owner will be required to hard surface Michelson Road to the easterly end of his approach, which is an expense of paving a public road that he has no idea what specifications he will be held to. Mr. Scharl has extreme drainage concerns with the property.*

*Chairperson Colling indicated the applicant has another problem based on the fact there is no access to the building from Rochester Road. There will be a visibility problem here no matter what the owner does - you will see the building, but you will not see the access to it. A variance would not solve the problem to begin with. The issue is if the property is zoned FB-2, the building site plan wouldn't make sense. Without a driveway, granting the variance does not make sense because of the circumstances.*

*Mr. Scharl noted without the FB-2 zoning, the loss of 22 feet of building from the front, and the high cost of developing this piece of property because of having to pave Michelson, are extreme circumstances. There is a reason this property has sat vacant for many years - it's extremely difficult to develop. The smaller the building, the more the hardships because of the costs.*

*Chairperson Colling commented the ZBA is not tasked with looking at the associated costs.*

*Mr. Schultz asked if the two businesses could be combined. Then the entrance/parking could then be combined.*

*Mr. Zetouna replied no, they are two separate businesses. He leases his current liquor store from the property owner.*

*After researching the zoning ordinance, Mr. Anzek stated that the required setbacks for the building under the FB-2 zoning would be between 15 and 25 feet*

off a major arterial roads, with a maximum height of 30 feet.

Mr. Hetrick commented that the FB-2 zoning would give the applicant more flexibility on the building envelope.

**MOTION** by Koluch, seconded by Brnabic, in the matter of File No. 16-005, that the request for a variance of 22 feet from Section 138-5.100 of the Rochester Hills Code of Ordinances to allow a building to be located 43 feet from the proposed MDOT right-of-way and 28 feet from the City's ROW, for 3755 S. Rochester Rd., Parcel Number 15-35-352-001 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 of the Zoning Ordinance will not prevent the owner from using the property for a permitted purpose in a reasonable manner without encroaching into the required front yard setback, and no practical difficulty has been demonstrated for the property.
2. There are no unique circumstances of the property that have been identified by the applicant that necessitate granting the variance.
3. The problems are self-created by the property owner in the form of the applicant's desire to construct a structure of a size and configuration that does not meet City Ordinance requirements or conform to all applicable City Codes and Ordinances.
4. 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. The granting of this variance could encourage further incursions upon the Zoning Ordinance that would result in further variances being considered by the Zoning Board of Appeals that could be construed as removing the responsibility of meeting the Zoning Ordinance from applicants.
5. There are other manners of relief such as rezoning the property, or seeking a rezoning to an FB-2 type district.

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

**Aye** 7 - Brnabic, Colling, Fons, Hetrick, Koluch, McGunn and Schultz

Chairperson Colling indicated the variance has been denied. As mentioned before there is better relief for the applicant through a rezoning of the area to the Flexible Business 2 zoning overlay.

Mr. Anzek asked that the Board pass a resolution to pursue the FB-2 rezoning, so this may be presented to the Planning Commission.

**MOTION** by Koluch, seconded by Hetrick, that the ZBA endorses the pursuit in consideration of changing the zoning of Rochester Road properties between

*M59 and South Boulevard to the FB-2, Flexible Business overlay, to the Planning Commission and to the City Council. The Board feels this is an important move that would simplify the matter of development on Rochester Road south of M59.*

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

**Ayes** 7 - Brnabic, Colling, Fons, Hetrick, Koluch, McGunn and Schultz

*Mr. Anzek thanked the Board for the resolution. The purpose for asking is that being a City initiated rezoning, there is no financial burden on the applicants to request the rezoning.*

### **ANY OTHER BUSINESS**

*No other business was brought forward for discussion. .*

### **NEXT MEETING DATE**

*The next Regular Meeting is scheduled for July 13, 2016.*

### **ADJOURNMENT**

*Hearing no further business, Chairperson Colling adjourned the meeting at 7:55 p.m.*

---

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

---

*Sandi DiSipio, Recording Secretary*