



Department of Planning and Economic Development
 Staff Report to the Zoning Board of Appeals

January 5, 2017

2201 Crooks Rd.	
REQUEST	An appeal of staff's determination regarding permitted uses
APPLICANT	Gary M. Piontkowski, Owner 2201 Crooks Rd. Rochester Hills, MI 48309
LOCATION	2201 Crooks Rd., located on the east side of Crooks between Hamlin & Star Batt
FILE NO.	16-033
PARCEL NO.	15-28-102-002
ZONING	REC-W Regional Employment Center - Workplace
STAFF	Edward P. Anzek, AICP, Director of Planning

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Request Variance

The applicant is requesting an appeal to the Zoning Board of Appeals of a denial of a use for the rear portion of their auto body repair shop located at 2201 Crooks Road. This denial was made by me after consultation and review with the City Attorney of the Zoning Ordinance.

By way of history this matter came to light when the contractor for the operator of a proposed crematorium at the site submitted plans to the Building Department. As is customary, the plan reviewer met with planning staff to discuss whether the use is permitted or not. In our review the use of "crematorium" is not a listed use in the Land Use Table (Sec. 138-4.300, page 4-7). Our second course of action is to review this use to determine if something of a similar nature is listed as a permitted or conditional use and define the crematorium use as same/similar. It is this action that we turned to the City Attorney as to his opinion on similar type activities that could include a crematorium. Mr. Staran offered that in his review he would define the crematorium type use as an incinerator.

An "incinerator" as a use is also not permitted in any District of the Zoning Ordinance. That understanding then invokes Section 138-4.105, **Prohibited Uses**, where it states, "*Uses that are not specifically listed as a principal use or conditional use permitted by this ordinance in a zoning district, or otherwise determined to be similar to a listed, and permitted use, shall be prohibited in the district.*"

Although this appeal is directed at an interpretation of the Zoning Ordinance, specifically the Land Use Table the process for an appeal does require public notification and notification to all property owners within 300 feet. We did receive one email from an adjacent property owner expressing their concern over this activity and that email is included.

The City Attorney has provided his legal opinion as he could not attend the meeting due to conflicts. The City

Attorney expands into greater detail than what staff has provided.

Site Description

The subject site is located on the east side of Crooks, between Hamlin and Star Batt. Refer to the following table for the zoning and existing and future land use designations for the site and surrounding parcels.

	Zoning	Existing Land Use	Future Land Use
Subject Site	REC-W Regional Employment Center - Workplace	A Auto Point	REC - Regional Employment Center
North	REC-W	Signature Press	REC
South	REC-W	Star Batt industrial complex	REC
East	REC-W	Berkley Screw Machine Products	REC
West	REC-W	Vacant parcel then Crooks Road. Shopping center across Crooks Road.	REC

Analysis

I believe the basis for the decision to deny is vested in law, that being that the crematory operation is not a permitted use by right or by conditional use permit as the Zoning Ordinance does not list the use or any similar use as being permitted. In accordance with Sec. 138-4.105 any use not specifically listed is a prohibited use and staff has not erred in the interpretation of the Ordinance.

However, that being said, staff has commenced with the analysis as to the possible need to permit such a use. I would like to make a point that although a crematorium is an associated activity to a funeral home, it does not mandate that such an operation be in close proximity to one. In further discussions with Mr. Staran he advised that the lack of a use does not compel a city to allow it but rather a demonstrated need for the use does. Need in Rochester Hills would not be based on population but rather the need by funeral homes. Such a need may be difficult to establish given that there are no funeral homes located in Rochester Hills. Nevertheless, staff is working with our consultant team on this need assessment/analysis.

As Mr. Staran pointed out, the study will be developed and presented to the Planning Commission and City Council when it is completed.

A copy of the pertinent pages from the Zoning Ordinance are attached.

Sample Motions

Motion to Deny Appeal (Affirm City's Interpretation)

MOTION by _____, seconded by _____, in the matter of File No. 16-033, that an appeal of staff's denial of the right to use property located at 2201 Crooks Road for a crematorium is **DENIED**, and further that the decision by the Zoning Board of Appeals is based on the following Findings:

1. Section 138-4.300 Table of Permitted Uses by District, does not list crematorium(s), crematories, and any similar term as a permitted by right or by Conditional use permit in any Zoning District of the City.
2. That by standard practice and by Ordinance requirement, as stated in Sec.138.4.105, there are not any other uses that are determined to be similar to a crematorium that is permitted in the District.
3. Section 138-4.105 Prohibited Uses, states that any use not listed as a permitted use or conditionally permitted use, or any similar use, is prohibited.
4. And that the legal opinion provided by the City Attorney supports the decision of staff.

Motion to Approve Appeal (Reverse City's interpretation)

MOTION by _____, seconded by _____, in the matter of File No. 16-033, that an appeal of staff's denial of the right to use property located at 2201 Crooks Road for a crematorium is **APPROVED**, and further that the decision by the Zoning Board of Appeals is based on the following Findings:

1. That the city staff erred in their review of Section 138-4.300 Table of Permitted Uses by District.
2. That there are other uses that are determined to be similar to a crematorium that is permitted in the District.
3. That the decision made by the city staff is arbitrary and/Or capricious.

End of document

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Section 138-2.401 Exercising Powers

In exercising the powers described in Section 138-2.400, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may take such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building department from whom the appeal is taken.

Section 138-2.402 Notice

The Zoning Board of Appeals shall make no recommendation except in a specific case and after a hearing conducted by such board. Notice of such hearing shall be provided in the manner established in the Michigan Zoning Enabling Act, PA 110 of 2006 (as amended).

Section 138-2.403 Effect of Actions

A. Expiration of Approval.

1. No order of the Zoning Board of Appeals permitting the erection or alteration of a building, except in the case of an interpretation made by the Zoning Board of Appeals, shall be valid for a period longer than one year from the date of approval unless a building permit or site plan approval for such erection or alteration is obtained within such period and such erection and alteration is started and proceeds to completion in accordance with the terms of such permit or approved site plan.
2. No order of the Zoning Board of Appeals permitting a use of a building or premises, except in the case of an interpretation made by the Zoning Board of Appeals, shall be valid for a period longer than one year from the date of approval, unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit or site plan approval for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit or approved site plan.

B. Resubmittal. No request or appeal which the Zoning Board of Appeals has denied wholly or in part may be resubmitted to or reheard by the Zoning Board of Appeals for a period of one year following the effective date of the decision by the Zoning Board of Appeals, except where the Zoning Board of Appeals determines there is valid new evidence that was unavailable to the applicant at the time of the prior hearing or a substantial change in circumstances. Applications for a rehearing shall be in writing and shall be subject to the same rules and requirements as an original request.

Section 138-2.404 Appeals of Administrative Decisions

- A. Authority. The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the person or body charged with administration or enforcement of the Zoning Ordinance. Such appeals may be taken to the Board by the person, firm or corporation aggrieved, or by an officer, department, board or bureau of the City affected by the order, requirement, decision or determination, provided that a notice of appeal application is filed with Planning and Development Department within twenty-one (21) days of such action.
- B. Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building or public services department certifies to the Zoning Board of Appeals after the notice of appeal has been filed that by reason of facts stated in a certificate, a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the building or public services department and on due cause shown.

- C. **Public Hearing.** The board shall select a reasonable time and place for the hearing of the appeal and shall give due notice in accordance with the public hearing requirements of the Michigan Zoning Enabling Act, PA 110 of 2006 (as amended) as summarized in [Section 138-1.203](#) and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.
- D. **Fee.** A fee shall be paid at the time the notice of appeal is filed to the City treasurer to the credit of the general revenue fund of the City. The fees to be charged for appeals shall be set by resolution of the City Council. The fee for appeals shall be as provided in section 110-437 for variance, interpretation or appeal of decision requests regarding alterations, modifications, additions or accessory buildings for existing single-family residences, and a fee as provided in section 110-437 for all other variance, interpretation, appeal of decision or approval requests.
- E. **Required Findings.** The Zoning Board of Appeals may reverse an administrative action only if it finds that the order, requirement, decision or determination was arbitrary or capricious, based upon an erroneous finding of a material fact, constituted an abuse of discretion, or based upon an erroneous interpretation of the Zoning Ordinance.

Section 138-2.405 **Interpretation of Zoning District Boundaries**

Where the actual lines of streets, alleys, or property boundaries vary from the portions indicated on the Zoning Map, or some ambiguity exists as to zoning district boundaries, the Zoning Board of Appeals shall have the power to interpret the Zoning Map in such a way as to carry out the intents and purposes of Zoning Ordinance and Master Plan.

Section 138-2.406 **Interpretation of Zoning Ordinance Provisions**

The Zoning Board of Appeals shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and carry out the intents and purposes of the Zoning Ordinance and Master Plan.

Section 138-2.407 **Dimensional Variance**

- A. **Authority.** The Zoning Board of Appeals may grant a dimensional (nonuse) variance to provide relief from a specific standard in this ordinance relating to an area, a dimension or a construction requirement or limitation, upon the concurring vote of a majority of the members of the Zoning Board of Appeals.
- B. **Practical Difficulty.** A nonuse variance shall not be granted unless the Zoning Board of Appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this ordinance. In determining whether a practical difficulty exists, the Zoning Board of Appeals must find that:
 - 1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.
 - 2. A grant of 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 other property owners in the zoning district.
 - 3. The plight of the applicant is due to the unique circumstances of the property.
 - 4. The problem is not self-created.
 - 5. The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

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Section 138-4.101 **Zoning Map and District Boundaries**

The boundaries of the zoning districts are established as shown on the zoning map. The map, all notations, references, and other information shown thereon is as much a part of this ordinance as if fully described in this Article 4, provided:

- A. Unless clearly shown otherwise on the Map, the boundaries of the districts are:
 - 1. Lot lines;
 - 2. The centerlines of streets, alleys, roads, watercourses, or such lines extended; and
 - 3. The corporate limits of the City.
- B. Where, due to the scale, lack of detail, or illegibility of the zoning map accompanying this ordinance there is any uncertainty, contradiction, or conflict as to the location of any district boundaries shown thereon, an interpretation concerning the exact location of district boundary lines shall be determined by the Building Official, upon written application or upon its own motion. Any decision of the Building Official in these matters may be appealed to the Zoning Board of Appeals as set forth in [Section 138-2.405](#).

Section 138-4.102 **Zoning of Rights-of-Way**

All streets, alleys and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon such streets, alleys or railroad rights-of-way. Where the centerline of a street or alley serves as a district boundary, the zoning of such street or alley, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such centerline.

Section 138-4.103 **Zoning of Vacated Areas**

Whenever any street, alley or other public way within the City is vacated by official governmental action and when the lands previously within the boundaries of the public way attach to and become a part of the land adjoining such street, alley or other public way, such lands shall automatically, and without further governmental action be subject to the same zoning regulations as are applicable to the land to which it attaches.

Section 138-4.104 **Principal Uses and Conditional Uses**

In all districts, no structure or land shall be used or occupied, except in conformance with [Section 138-4.300](#) (Table of Permitted Land Uses by District), and as otherwise provided for in this ordinance. Conditional uses may be permitted in accordance with [Section 138-4.300](#) (Table of Permitted Land Uses by District), subject to a public hearing and approval by the Planning Commission in accordance with the procedures and conditions defined in [Article 2, Chapter 3](#) (Conditional Uses).

Section 138-4.105 **Prohibited Uses**

Uses that are not specifically listed as a principal use or conditional use permitted by this ordinance in a zoning district, or otherwise determined to be similar to a listed and permitted use, shall be prohibited in the district.

Section 138-4.106 **Design and Development Requirements**

All principal permitted uses and conditional uses shall comply with any applicable requirements of this ordinance and other City codes and ordinances. No structure shall be erected, reconstructed, altered or enlarged, nor shall permits or certificates of occupancy be issued, except in conformance with this ordinance and other City codes and ordinances.