



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

January 5, 2017

3971 Piccadilly Dr. – Rear Yard Setback Variance

REQUEST	A variance of 6.58 feet from <i>Section 138-5.101</i> of the Code of Ordinances to permit a 28.42 foot rear yard setback
APPLICANT	Christopher Zerbst, Creative Brick 3195 Orchard Lake Rd. Keego Harbor, MI 48320
LOCATION	3971 Piccadilly, west of Adams Rd., north of Hamlin Rd.
FILE NO.	16-032
PARCEL NO.	15-19-328-028
ZONING	R-2 One Family Residential
STAFF	Sara Roediger, AICP, Manager of Planning

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Requested Variance

The applicant is requesting a 6.58 foot rear yard setback variance from the Code of Ordinances to permit an attached accessory structure (covered patio) with a 28.42 foot rear yard setback.

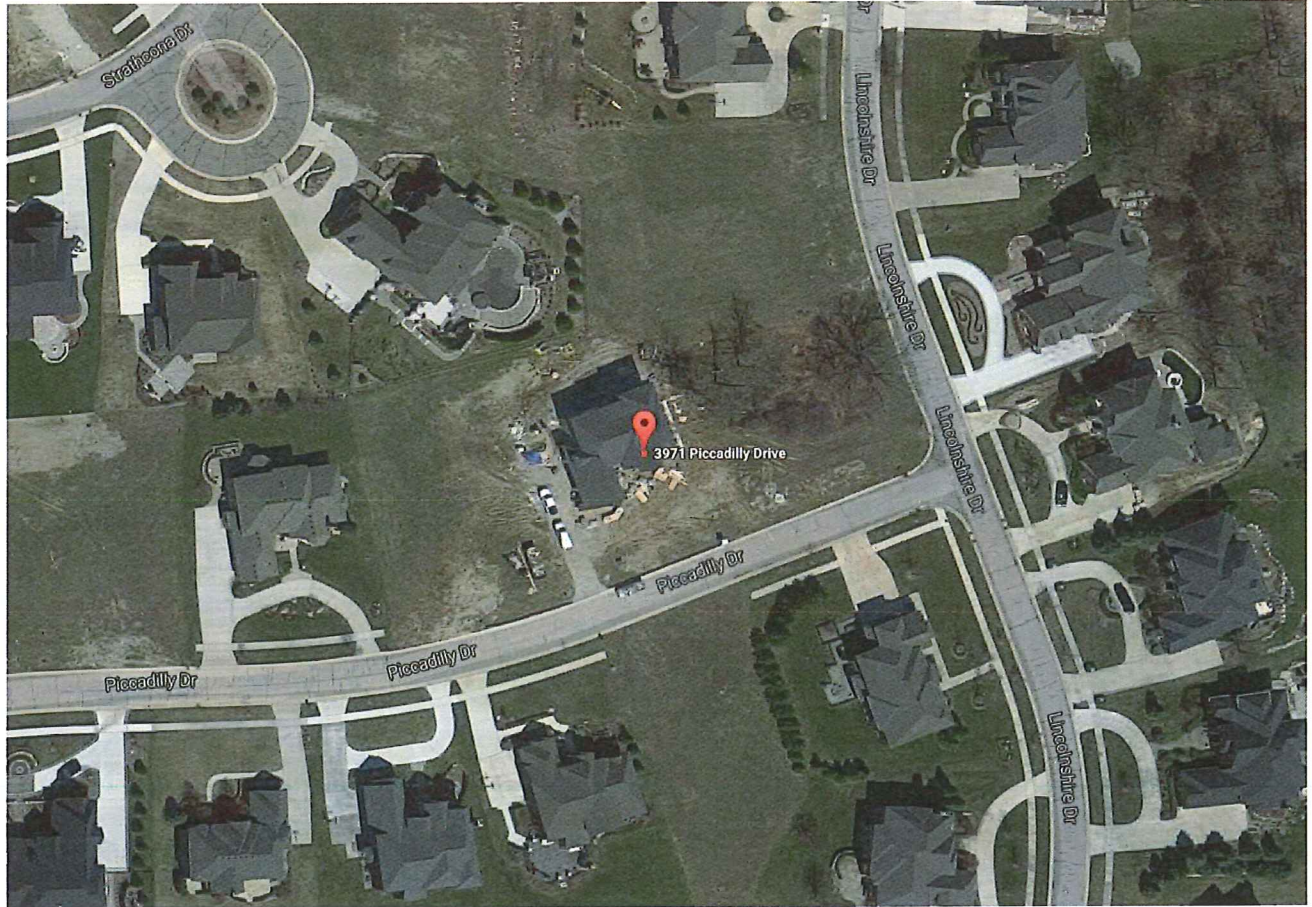
Section 138-10.101.A.2. states that when an accessory structure is located within 10 feet of a main building, it is considered part of the main building and subject to the setback regulations. The proposed accessory structure is located within 10 feet of the main structure and 28.42 feet off of the northern rear property line, resulting in a shortage of 6.58 feet.

Site Description

The subject parcel is located on the north side of Piccadilly Drive within the Butler Ridge subdivision. The applicant is proposing to construct a covered patio off of the rear of the house.

Site Photographs

Please see the following page for an aerial of the property.



Analysis

In the case of a dimensional variance, the Zoning Ordinance requires the ZBA to make a finding that a practical difficulty exists that precludes the property owner from meeting the requirements of the Ordinance. *Section 138-2.407.B.* provides criteria for determining if a practical difficulty exists.

1. *Compliance with the strict letter of the restrictions governing area, setback, frontage, bulk, height, 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.* Compliance with the ordinance would require the proposed patio to be reconfigured to meet setbacks or to be fully or partially unenclosed, in which case would be permitted as shown. The applicant notes in their application that the unique lot shape provides a hardship.
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.* The rear yard setback is consistent for all RE, R-1 and R-2 properties in the city. Granting of the variance would give the applicant the ability to develop their property differently than all the other properties in the neighborhood.
3. *The plight of the applicant is due to the unique circumstances of the property.* There are no known unique circumstances of the property. The applicant indicates that the rear line is not parallel to the home as unique to the property.
4. *The problem is not self-created.* The applicant argues that a functional patio cannot be built due to the lot size. The applicant has the ability to redesign the enclosed accessory structure to meet ordinance requirements or to keep the patio the same size and not have it enclosed, similar to many of the surrounding homes.

5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* Granting the requested variance will allow for an attached accessory structure with larger area than other homes in the neighborhood and city. Consideration of the variance must take into account the potential for the variance to spur similar requests on surrounding properties and implications for the future enforcement of the Ordinance.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 16-032, that the request for a variance from *Section 138-5.101 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a variance of 6.58 feet, Parcel Identification Number 15-19-328-028, zoned R-2 (One Family Residential), 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. Compliance with the strict letter of the restrictions governing the minimum setback for attached accessory buildings will unreasonably prevent the owner from using the property for a permitted purpose, or will be unnecessarily burdensome.
2. 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 area.
3. A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.
4. There are unique circumstances of the property that necessitate granting the variance, and that distinguish the subject property from other properties with respect to compliance with the ordinance regulations. Specifically, _____.
5. Alternatives do not exist that would allow the intended and/or reasonable use of the property that would allow the requirements of the Ordinance to be met.
6. This variance is necessary for the preservation and enjoyment of a substantial property right possessed by any other property owner in the same zone or vicinity.
7. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
8. 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.

Conditions of Approval. Approval of the variance is subject to the following conditions (insert any appropriate conditions).

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 16-032, that the request for a variance from *Section 138-5.101 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a variance of 6.58 feet, Parcel Identification Number 15-19-328-028, zoned R-2 (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 minimum setback for attached 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 an attached accessory structure closer to the rear property line than other lots. 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 their desire to construct a covered attached accessory structure larger than permitted on the property.
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 may 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.