



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

April 3, 2019

981 Allston Dr. – Average Front Yard and Side Yard Setback Variances	
REQUEST	Variances of 10.91 feet from Section 138-5.101 (Average Front Setback) and .41 feet from <i>Section 138-5.100 (Schedule of Regulations)</i> of the Code of Ordinances to permit a front yard setback of 50.09 feet (average 61 feet) and a side yard setback of 14.59 feet (15 feet required)
APPLICANT	Robert Clarke 981 Allston Drive Rochester Hills, MI 48309
LOCATION	981 Allston Dr., south of Tienken, west of Livernois
FILE NO.	19-011
PARCEL NO.	15-09-201-018
ZONING	R-2 One Family Residential
STAFF	Kristen Kapelanski, Manager of Planning

In this Report:

Requested Variance..... 1
 Site Description..... 1
 Analysis..... 2
 Sample Motions..... 3

Requested Variance

The applicant is requesting a 10.91-foot front yard setback variance, and a .41-foot side yard setback variance, from the Code of Ordinances to permit an addition with a 50.09-foot front yard setback as measured from the front property line, and side yard setback of 14.59 feet from the interior southern lot line.

Section 138-5.101 Average Front Setback states that if there are existing homes within 200 feet of a subject lot, on the same side of the street, that have an average setback that differs from the front setback as required within this ordinance by more than 10 (ten) feet, then the average front setback shall be used as the required front setback provided, however, that in no instance shall a front yard setback be reduced to less than twenty (20) feet. The Building Department identified the established building line parallel to Allston Dr. at approximately 61 feet. The addition would encroach into the average front setback approximately 10.91 feet.

Section 138-5.100 Schedule of Regulations Table 5 requires a side yard setback of 15 feet in an R-2 district. The proposed front addition would result in a side yard setback of 14.59, requiring a variance of .41-feet.

Site Description

The subject parcel is located south of Tienken, west of Livernois Rd. The applicant is proposing to construct an

addition to the front of the house (also the rear, but this application does not refer to that).

Site Photograph



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 addition to be reconfigured to meet the required setbacks. The applicant has indicated that the residence was built at a slight angle to the property line, making the minor sliver of the proposed addition crossing over the side yard and that the main floor of the residence was inadvertently built 2 ½" beyond the foundation wall and the brick is corbeled up to the stud wall, allowing this error to be captured by the new brick wall. Also, regarding the front yard, the applicant states that the current residence comes to the same location on the property as the proposed addition to match the current distance of the existing residence.
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. There is an established building line for the front yard which results in a larger setback than the R-2 district setbacks. According to the applicant the granting of the variance would allow the adjoining properties to maintain a higher property value without creating an unusual scale in the neighborhood, and it would give the applicant the ability to develop his property for long-term sustainability as their family's home

3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant indicates that the front setback is due to an average of the homes to the south, which are on very large parcels approximately twice as deep as the subject parcel. When the applicant's home was built, the average setback allowed for a maximum requirement of 50 feet regardless of the average setback of the adjoining properties. The subject property is the minimum size for a lot in this area; the 50' front setback required at that time made the rear yard significantly smaller than those of homes in the general area. By maintaining the proposed setback, the applicant claims that it would not impact the neighbors' homes in any way and would allow what was contemplated and allowed when the home was built. Secondly, the applicant states that the side yard variance is created by the inadvertent rotation of the home to the property line which happened during construction. The variance is necessary to capture an offset described in number one and to plane out the current roof line with the new roof line.
4. *The problem is not self-created.* The applicant states that the front yard was allowable when the house was built and is being impacted heavily by the very large properties adjacent to his parcel. Additionally, the side yard is due to a rotation that was inadvertently done by a foundation contractor during the original construction. The original documents show the residence aligned with the property line, which, if constructed as designed, would not have needed a variance.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant states that the front setback will match where the current home is in relation to the front setback and, therefore, has no impact on the public safety and welfare compared to the current residence. He also indicates that the side yard variance is for 3.3 s.f. of area which is so minor that it would not be identifiable to most people without full survey data and has no impact on public safety and welfare.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 19-011, that the request for a variance from *Section 138-5.101 (Average Front Setback)* and *Section 138-5.100 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a front yard setback variance of 10.91 feet, and a side yard setback variance of .41 feet, Parcel Identification Number 15-09-201-018, 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 the established building line 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 the expanded use of a residential home 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, the combined factors of a corner lot, smaller than average lot for the neighborhood, presence of a heavily treed neighborhood, siting of the home on the property and because the homes are spaced over

100 feet apart.

5. 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.
6. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
7. 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 City File No. 19-011, that the request for a variance from *Section 138-5.101 (Average Front Setback) and Section 138-5.100 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a front yard setback variance of 10.91 feet and a side yard setback variance of .41 feet, Parcel Identification Number 15-09-201-018, 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 the established building line 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 expanded use of a residential home not consistent with the established building line.
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 additions within the established building line.
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.