



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

July 6, 2017

260 Winry Dr. – Side Yard Setback Variance	
REQUEST	A variance of 4.4 feet from <i>Section 138-5.100</i> of the Code of Ordinances to permit a 5.6 foot side yard setback
APPLICANT	David & Wendy Taylor 260 Winry Dr. Rochester Hills, MI 48307
LOCATION	260 Winry Dr., south of Tienken Rd., west of N. Pine St.
FILE NO.	17-003
PARCEL NO.	15-10-205-037
ZONING	R-4 One Family Residential
STAFF	Sara Roediger, AICP, Manager of Planning

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Requested Variance

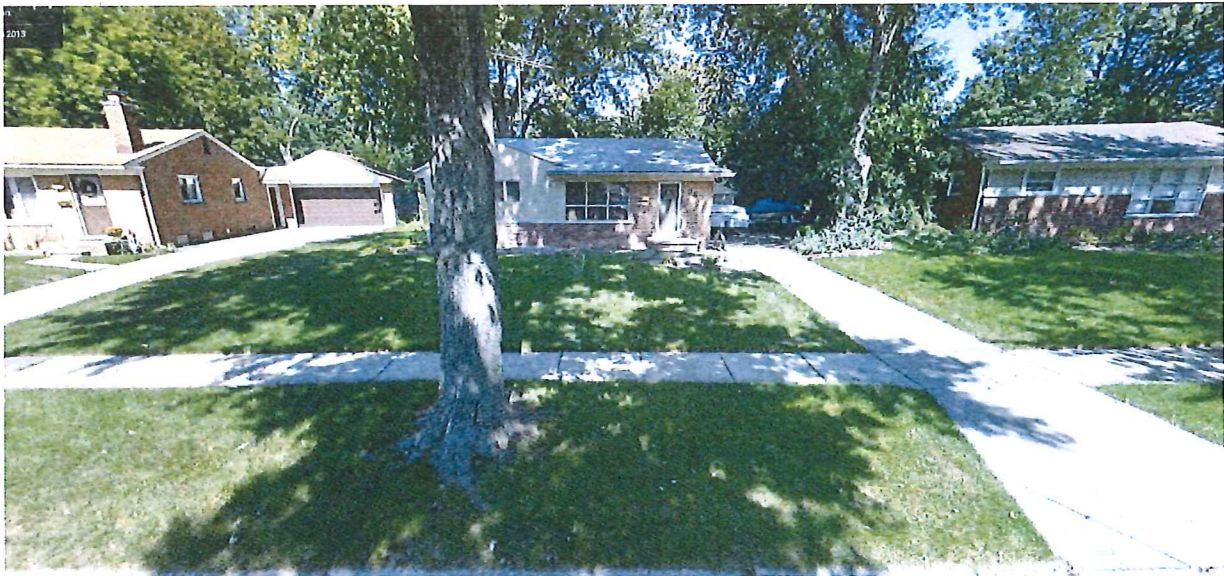
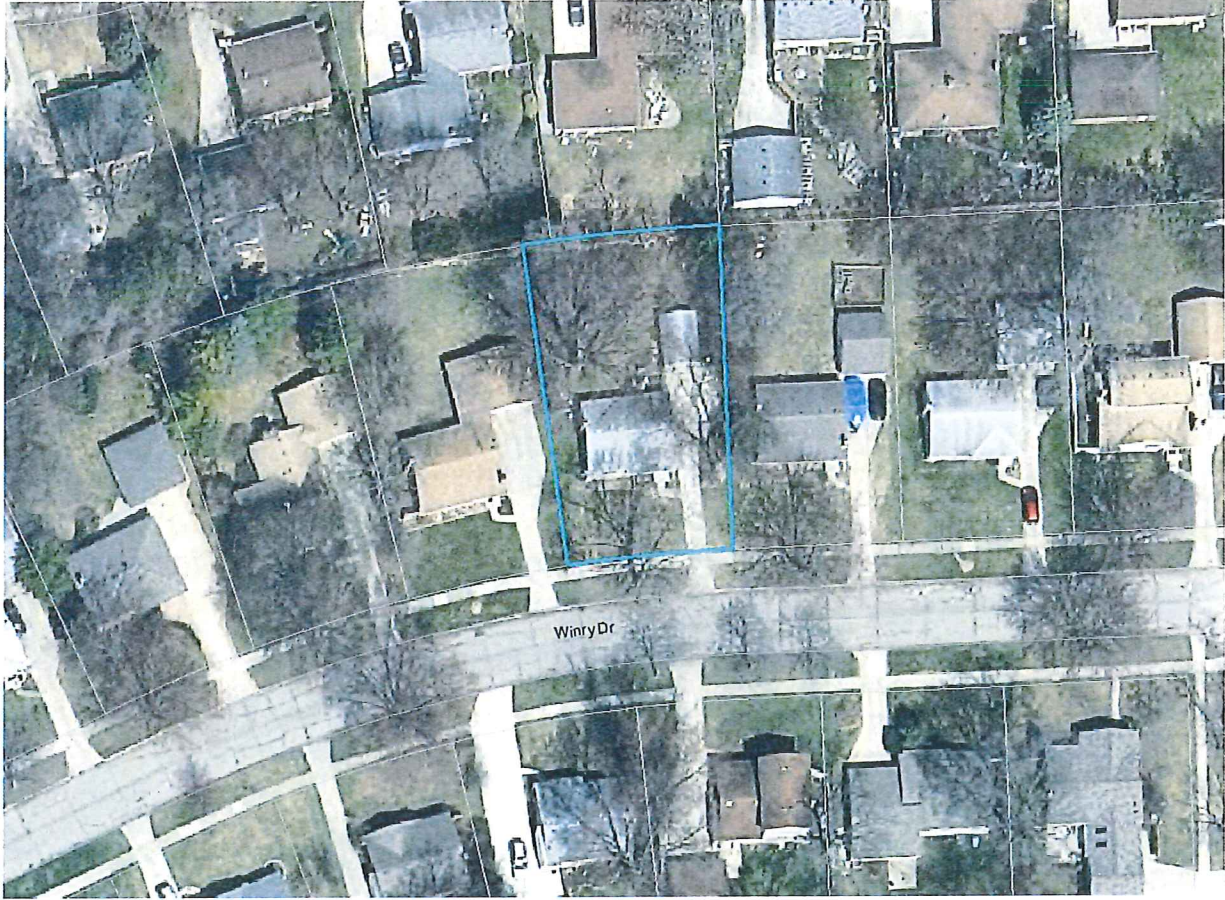
The applicant is requesting a 4.4 foot side yard setback variance from *Section 138-5.100* of the Code of Ordinances to permit an addition and attached garage resulting in a 5.6 foot east side yard setback. The applicant was originally denied a similar variance request on March 8, 2017, but is returning with a revised variance request, has provided new evidence that was not supplied at the prior hearing, and would like the matter to be heard by the full board, as two were absent at the previous meeting.

Site Description

The subject parcel is located on the north side of Winry Drive within the North Hill subdivision, located southwest of Rochester and Tienken Roads. The applicant is proposing to construct an addition and attached garage off the rear and side of the house.

Site Photographs

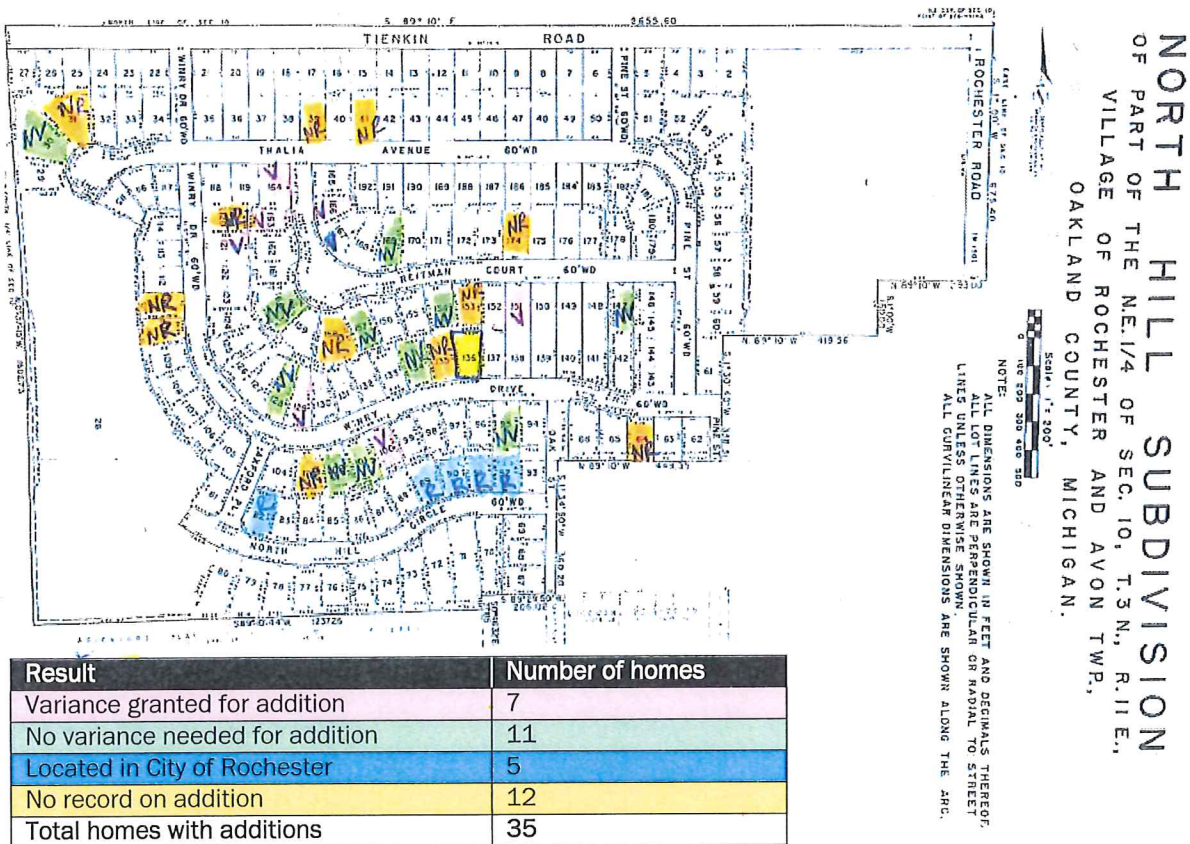
Please see the following page for an aerial and photographs of the property.



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 addition and attached garage to be reconfigured to meet setbacks. Based on the information described in 2. below, a number of properties in this subdivision have developed similar additions.
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 side yard setback is consistent for all R-3 and R-4 properties in the City. The homes in this subdivision, North Hill, which was platted with 192 homes in 1955, were constructed to be about 1,000 sq. ft. in size and many homeowners in this subdivision have constructed additions over the years. The applicant provided addresses for other homes in the subdivision which have similar garage additions and staff did extensive research to try to determine how these homes have evolved over the years and the findings are below.



There were seven instances of variances that were granted relief from the side yard setback requirement. Excerpts from those minutes indicate that the city had no objection to the granting of the variance as there many examples of this type of addition in this subdivision and would therefore not be detrimental to the neighborhood. The minutes of these meetings are attached.

3. *The plight of the applicant is due to the unique circumstances of the property.* The small size and wedge shape of this lot make it difficult to apply the setback regulations and have a reasonable size house, consistent with many other lots in the North Hill subdivision. With a lot width of 66.5, this lot has a smaller lot width than many of the other lots in the subdivision which tend to consist of 70 or 80 ft. in width. This combined with the angled side yards, which result in a wedge shaped parcel, with a rear yard width of nearly 80 ft. make it extremely difficult to put an addition on this house consistent with many in the neighborhood, which did not need variance as they had rectangular parcels.
4. *The problem is not self-created.* The size and shape of the lot was established when the lots were platted in 1955. The applicant argues that an attached garage is not possible due to the side yard setback requirements on a 66 foot lot.
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 garage closer to the side lot line than required by ordinance, but is consistent with a number of other homes in this neighborhood and one could argue that precedence has already been set as the presence and frequency of additions on the homes in this subdivision make up the character and feel of the neighborhood, regardless of how and when the additions came about.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 17-003, that the request for a variance from *Section 138-5.100 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a variance of 4.4 feet; Parcel Identification Number 15-10-205-037, zoned R-4 (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 be unnecessarily burdensome as there are a number of properties in this subdivision have developed similar additions.
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 as 35 other homes in the North Hill Subdivision have similar additions.
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 small size and wedge shape of this lot that make it difficult to apply the setback regulations and have a reasonable size house, consistent with many other lots in the North Hill subdivision.
5. This variance is necessary for the preservation and enjoyment of a substantial property right possessed by 35 other property owners in the North Hill neighborhood who have similar additions.
6. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses as the presence and frequency of similar additions on the homes in this subdivision make up the character and feel of the neighborhood and the proposed variance request is consistent with the existing character.
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 File No. 17-003, that the request for a variance from *Section 138-5.100 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a variance of 4.4 feet, Parcel Identification Number 15-10-205-037, zoned R-4 (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 side 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 an addition and attached garage closer to the lot line 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.