



Department of Planning and Economic Development

Staff Report to the Zoning Board of Appeals

April 7, 2021

1608 Black Maple Dr. Rear Yard Setback Variance

REQUEST	A rear yard setback variance of 9.67 feet from <i>Section 138-5.100</i> to allow an enclosed rear porch to be located 25.33 feet from the rear property line
APPLICANT	Brian J. Brennan 906 Normandy Royal Oak, MI 48073
LOCATION	Located south of Walton Blvd., west of Livernois
FILE NO.	21-006
PARCEL NO.	15-16-126-011
ZONING	R-2 One Family Residential
STAFF	Kristen Kapelanski, Manager of Planning

Requested Variance

The applicant is requesting a variance from the Code of Ordinances to permit an enclosed, 345 sq. ft. rear porch to be 25.33 feet from the rear property line. *Section 138-5.100 (Schedule of Regulations)* requires a minimum rear yard setback of 35 feet in the R-2 One Family Residential District as measured from the property line, thus requiring a variance of 9.67 feet for the project to proceed as planned. The southwest portion of the proposed porch violates the setback.

The subject home is in the Willowood Subdivision, which was developed under the Open Space Option. Lot area (up to 25%) and front and side yard setbacks (to 30 and 10 feet respectively) can be reduced, and the setbacks have been. At the time the home was built, two front yard setbacks were required for a corner lot. If the home were built today, the side street yard could be reduced to 25 feet because two front yard setbacks are no longer required. It does not appear that it would have helped with this proposal, because the side street yard is on Black Maple. The front of the home faces Sugar Pine southeasterly, and the house has been rotated so that the building walls are not parallel to the lot lines. Staff is unsure why the home was built on an angle, but the current owners were not the first, so it could not be clarified.

The subject site is located south of Walton Blvd. west of Livernois. Below is a 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	R-2 One Family Residential	Residential Home	Residential 3
North	R-2 One Family Residential	Single family homes	Residential 3
South	R-2 One Family Residential	Single family homes	Residential 3
East	R-2 One Family Residential	Single family homes	Residential 3
West	R-2 One Family Residential	Single Family Homes	Residential 3

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. Please refer to the ZBA application for the applicant's responses to the following criteria.

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 requirements of the ordinance would not prevent the owner from using the property. The applicant states that there is a practical difficulty due to the shape of the lot and the larger setbacks required for a corner lot. Since this lot was developed under the Open Space Option, the front and side setbacks were actually allowed to be reduced. It cannot be determined if the orientation of the house makes the standards more difficult to comply.
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 owners would like to enclose the existing deck and provide more indoor/outdoor living space they believe is enjoyed by others in the neighborhood. There is an uncovered deck currently. Although financial considerations should not be considered, the applicant claims that the deck will add value to the home and neighborhood. He additionally states that adhering to the "restraints" do not leave an area big enough to create complementary architecture to be conducive to the neighborhood.
3. *The plight of the applicant is due to the unique circumstances of the property.* There are no unique physical characteristics of the property. The residence is situated diagonally on the property, and the applicant states that the deck cannot be located anywhere other than where proposed. He further states that "a bulk area wedged in the current buildable area in the rear

would create a difficult floor plan usage, allow less light and airflow through the residence and greatly complicate the roofline. The proposed area is also the current deck and entertainment location and the applicant states that “making the structure smaller or shifting it into the buildable area would complicate the architectural symmetry and block views and light from the current living area.”

4. *The problem is not self-created.* The applicant states that a usable structure of the proposed scope could not be placed on the site to complement the current residence given the nature of the setbacks and residence orientation.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant’s response is that the bulk mass of the proposed structure would continue the structure toward the rear and side, moving it away from the street view, and that it will complement the existing residence in architectural style. As to public safety, he offers that there would be no public access. The screened porch will be of similar materials to the home, and per the letters included, neighbors have indicated that they have no issues with and approve of the project.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 21-006, that the request for a variance of 9.67 feet from *Section 138-5.100* of the Rochester Hills Code of Ordinances to allow an enclosed, rear porch to be located 25.33 feet from the rear property line for 1608 Black Maple Dr., Parcel Identification Number 15-16-126-011 be **APPROVED** because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with respect to the front yard setback for which this variance is granted.

1. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property as has been previously enjoyed and will be unnecessarily burdensome.
2. Granting the variance will preserve a substantial property right for the applicant as has been previously enjoyed by this property owner and thus substantial justice shall be done.
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 as described in criterion 1. above, that distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations.
5. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
6. 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.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 21-006, that the request for a variance of 9.67 feet from *Section 138-5.100* of the Rochester Hills Code of Ordinances to allow an enclosed, rear porch to be located 25.33 feet from the property line for 1608 Black Maple Dr., Parcel Identification Number 15-16-126-011 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 rear yard setback, and no practical difficulty has been demonstrated for this property.
2. Granting the variance will not do substantial justice to nearby property owners as it would confer a special benefit on the applicant that is not enjoyed by other property owners in the vicinity.
3. There are no unique circumstances of the property have been identified by the applicant that necessitate granting the variance.
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 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.