



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

May 1, 2019

3536 Emmons Ave.
Side Yard Setback Variance

REQUEST	Variance of three feet from <i>Section 138-5.101 C (Foot Notes to the Schedule of Regulations for corner lots)</i> of the Code of Ordinances to permit a side yard setback of 12 feet (15 feet required)
APPLICANT	Robert Carpenter 3536 Emmons Ave. Rochester Hills, MI 48307
LOCATION	3536 Emmons Ave. south of Auburn west of Dequindre
FILE NO.	19-016
PARCEL NO.	15-36-405-029
ZONING	R-4 One Family Residential
STAFF	Kristen Kapelanski, Manager of Planning

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Requested Variance

The applicant is requesting a three-foot side yard setback variance from the Code of Ordinances to permit an addition of four feet with a one-foot overhang with a side yard setback of 12 feet from the side lot line of a corner lot.

Section 138-5.101 C states that “For corner lots, the side street yard shall not be less than 15 feet in the R-3 and R-4 districts.” The applicant is proposing a wrap around, covered porch on the north and east side of the home. The north side of the addition projects three feet into the required side yard setback on Harrod, and the applicant is requesting a variance of three feet to allow for a 12-foot setback (15 required for corner lots in the district).

Site Description

The subject parcel is located at the southwest corner of Harrod Ave. and Emmons Ave., south of Auburn and west of Dequindre. The applicant is proposing to construct an addition to the front and side of the house. The request is for the side yard on Harrod.

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 setback. The applicant has indicated that without an attached garage, it is very difficult to transport young children, groceries and personal property to and from his car in poor weather. It was stated that complying with the Ordinance would not allow adequate walkway space.
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.* According the applicant, the granting of the variance would allow a practical use in fair and extreme weather and increase the property value and curb appeal, not necessarily something the ZBA considers. The applicant also states that the proposed porch and walkway would relieve the walkways of gutter down spouts and not cross over walkways and create a trip hazard and a slip hazard during the winter and fall. The applicant indicates that a lesser variance would not allow for adequate walkway space between the support posts and the existing home.
3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant states that the property and existing structures for parking do not allow for ease of use. He claims that other properties in the district typically exhibit either an attached garage or are arranged with a driveway on Emmons, and his property has a driveway only on Harrod. It is not clear how having a driveway to Emmons would alleviate a problem; the garage would still have to be in the rear of the property. Perhaps it might be cost prohibitive, but the applicant might explain why the garage and home cannot be connected through a breezeway.

4. *The problem is not self-created.* The applicant states that he was not the original owner or builder of the property, and he had no control over the structure placement during the original construction. Although basically a moot point, it does not explain how a reconfiguration would help the situation.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant states that “the new covered walkway would only increase curb appeal and value. The proposed structure would not hinder or impede pedestrian or automobile traffic in any manner.”

The applicant needs to demonstrate that extraordinary or exceptional circumstances necessitate a variance, as to allow for the enjoyment of a substantial property right that would be denied if not granted the variance. Staff did not receive any correspondence for this matter.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 19-016, that the request for a variance from *Section 138-5.101 C (Foot Note to the Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a side yard setback variance of three feet, Parcel Identification Number 15-36-405-029, 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 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.
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. 19-016 that the request for a variance from *Section 138-5.101 C (Foot Note to the Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a side yard setback variance of three feet, Parcel Identification Number 15-36-405-029, 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 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.