



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

October 19, 2018

3079 Eastwood Dr. – Side Yard Setback Variance

REQUEST	A variance of 1.3 feet from <i>Section 138-5.100</i> of the Code of Ordinances to permit an 8.7 foot side yard setback
APPLICANT	John Lipka 3079 Eastwood Rochester Hills, MI
LOCATION	3079 Eastwood Dr., south of Auburn Rd., east of Adams Rd.
FILE NO.	18-019
PARCEL NO.	15-31-128-023
ZONING	R-4 One Family Residential
STAFF	Kristen Kapelanski, AICP, Planning Manager

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Requested Variance

The applicant is requesting a 1.3 foot side yard setback variance from *Section 138-5.100* of the Code of Ordinances to permit a lot split resulting in an 8.7 foot south side yard setback.

Site Description

The subject parcel is located on the east side of Eastwood Drive in the Dodge Auburn Park Subdivision, generally located southeast of Auburn and Adams Roads. The applicant is proposing to divide the existing parcel into two 60 foot parcels, meeting the minimum lot width requirements of zoning ordinance. The proposed Parcel 1 would contain the existing house and Parcel 2 would be vacant. The existing house would be setback 8.7 feet from the proposed southern property line of Parcel 1.

Site Photographs

Please see the following page for an aerial photograph 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 homeowner to relocate the existing house on the lot or to remove 1.3 feet along the southern length of the existing house to meet setbacks. Based on the aerial photograph and information submitted by the applicant, a number of properties in the Dodge Auburn Park subdivision have similar setbacks.
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-4 properties in the City. Based on aerial photography, it appears a number of the homes in this subdivision, Dodge Auburn Park, do not comply with current ordinance regulations. Staff could not find any record of any previously granted setback variances for Eastwood Drive in this area.

3. *The plight of the applicant is due to the unique circumstances of the property.* There are no known unique circumstances of the property, however the proposed parcel split would be consistent with the size of the lots in the subdivision and the deficient side yard setback would also be consistent with homes in the neighborhood making the lots in this subdivision unique.
4. *The problem is not self-created.* The applicant argues that compliance with the ordinance provisions is not possible because of the location of the existing home.
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 a home closer to the side lot line than required by ordinance, but it would be consistent with a number of other homes in this neighborhood and one could argue that precedence has already been set.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 18-019, 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 1.3 feet, Parcel Identification Number 15-31-128-023, 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 side yard setback will be unnecessarily burdensome as there are a number of properties in this subdivision with similar non-conforming side yard setbacks and matching lot widths.
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 the surrounding and nearby properties all have 60 foot lot widths and in some cases deficient side yard setbacks.
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 it is not reasonable to relocate or reduce the size of the existing home to meet the required setback.
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 other property owners in the neighborhood.
7. 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 lot sizes and deficient setbacks in this subdivision make up the character and feel of the neighborhood and the proposed variance request is consistent with the existing character.
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. 18-019, 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 1.3 feet, Parcel Identification Number 15-31-128-023, 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 side yard setback 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 a 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 divide the existing parcel.
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 divide similar lots 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.