



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

March 2, 2017

Table with 2 columns: Field Name (REQUEST, APPLICANT, LOCATION, FILE NO., PARCEL NO., ZONING, STAFF) and Description (A variance of 4.7 feet from Section 138-5.100 of the Code of Ordinances to permit a 5.3 foot side yard setback, David & Wendy Taylor, 260 Winry Dr., Rochester Hills, MI 48307, 260 Winry Dr., south of Tienken Rd., west of N. Pine St., 17-003, 15-10-205-037, R-4 One Family Residential, Sara Roediger, AICP, Manager of Planning)

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Requested Variance

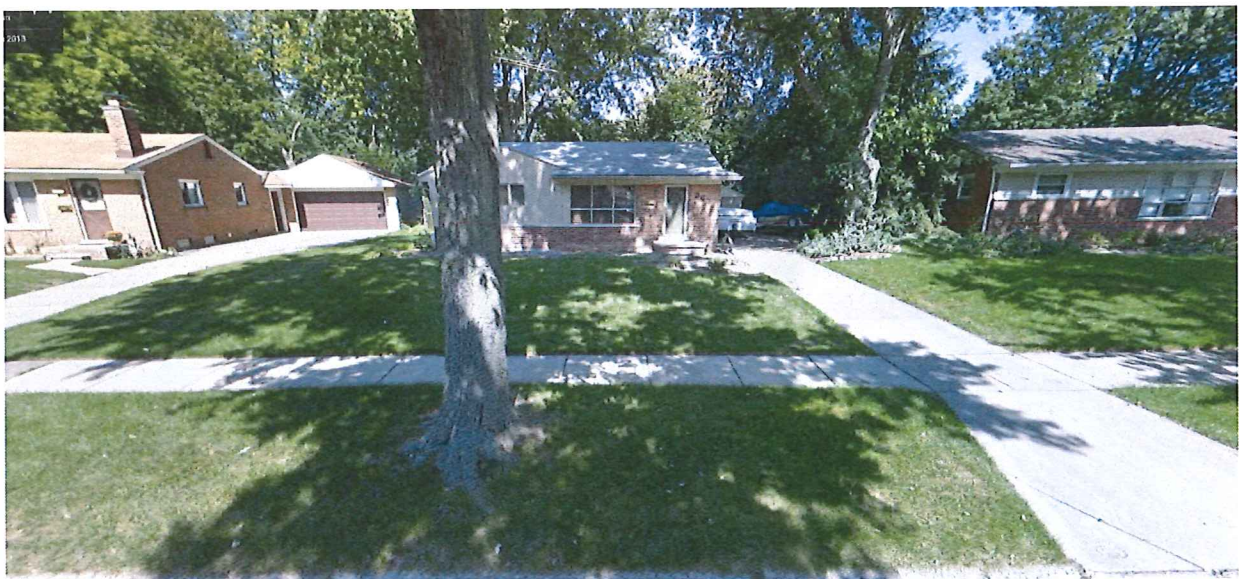
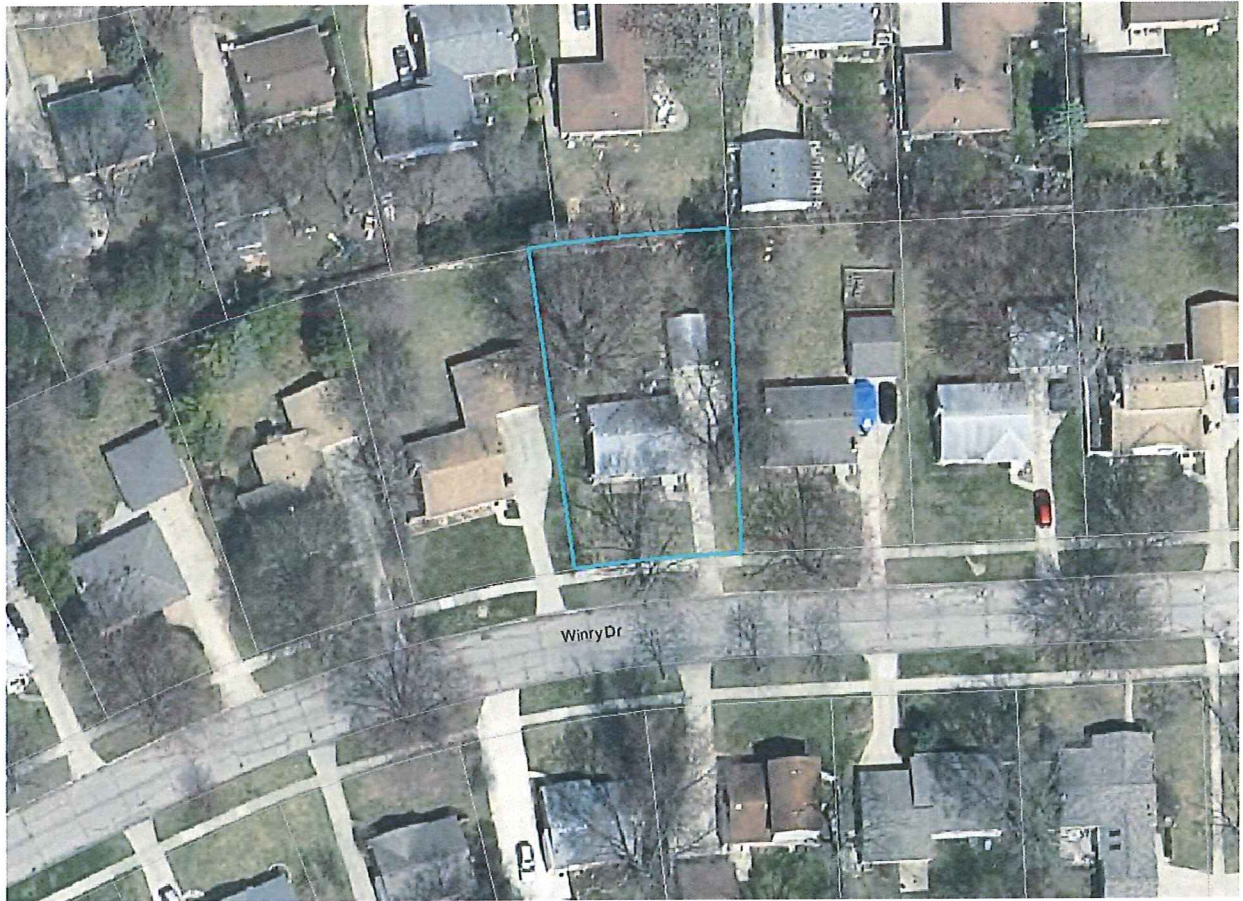
The applicant is requesting a 4.7 foot side yard setback variance from Section 138-5.100 of the Code of Ordinances to permit an addition and attached garage resulting in a 5.3 foot east side yard setback.

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

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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. The applicant notes in their application that the side yard setback of 10 feet is restrictive for a 66 foot lot.
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. Many homes in this subdivision were constructed to be about 1,000 sq. ft. in size and many homeowners in this subdivision have constructed additions over the years. There are at least four other cases that staff has located for the same request on Winry or Thalia Roads that were granted relief from this requirement. Excerpts from those minutes indicate that the city had no objection to the granting of the variance as there were similar variances granted in this subdivision in the past and will not be detrimental to the neighborhood.
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 size of the lots and the amount of past variances that have been granted in this subdivision makes the lots in this subdivision unique. The applicant indicates that the side yard setback of 10 feet is restrictive for a 66 foot lot.
4. *The problem is not self-created.* 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 consistent with a number of other homes in this neighborhood and one could argue that precedence has already been set.

## Sample Motions

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### ***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 4.7 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 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 a use or development of land 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 \_\_\_\_\_
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.
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. 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 4.7 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 rear 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.