



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

December 4, 2019

<b>510 Driftwood Ave. – Side Yard Setback Variance</b>	
<b>REQUEST</b>	A variance of 3 feet from <i>Section 138-5.100</i> of the Code of Ordinances to permit a 7-foot side yard setback
<b>APPLICANT</b>	Father & Son Construction 5032 Rochester Rd. Troy, MI 48085
<b>LOCATION</b>	North of Avon, west of John R
<b>FILE NO.</b>	19-043
<b>PARCEL NO.</b>	15-14-430-010
<b>ZONING</b>	R-3 One Family Residential
<b>STAFF</b>	Kristen Kapelanski, AICP, Manager of Planning

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**Requested Variance**

The applicant is requesting a 3-foot side yard setback variance from *Section 138-5.100* of the Code of Ordinances to permit an attached two-car garage resulting in a 7-foot north side yard setback. The home currently has an attached one-car garage with breezeway set back seven feet from the north property line, which would be removed.

**Site Description**

The subject parcel is located on the west side of Driftwood Ave. within the Eysters Bloomer Park subdivision, located north of Avon and west of John R. The home was built in 1949. The lot is 80 feet wide and 242 feet deep. The sub was platted in 1925 with 160 and 320-foot lots but records back to 1984 do not show a lot split, so we do not know when that occurred. R-3 zoning now requires 90 feet of frontage, but there were no ZBA cases requesting a side yard setback variance for homes in this subdivision in the last 20 years.

**Site Photographs**

Please see the following page for a photograph and aerial 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.* The applicant would like to put up a two-car garage in place of the original one-car but space is limited by several feet, and it requires a larger garage to encroach into the setback. Compliance with the ordinance would not allow enough room for a two-car, attached garage without putting it behind the home, which would block some of the rear of the home.
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 homes in the subdivision are of various sizes, but many of the lots are larger than the subject lot. We do not have measurements for other homes' setbacks and no records of anyone applying for a variance for an addition to see if it was or was not granted by the City.
3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant states that the lot is one of the narrowest on the street (see attached map). This does make it difficult to put a larger garage in the same place as the existing, however, it does not preclude building a detached garage in the rear yard as there is sufficient room to build and meet the rear yard setback. There are accessory structures in the neighborhood.
4. *The problem is not self-created.* The applicant states that the one-car garage was in place long before the owner purchased the home and that a two-car garage, more in keeping with the other homes in the sub, would not be possible if a ten-foot side yard was required. The existing garage has had a seven-foot side yard setback for over sixty years.
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 the applicant states that since there will be no movement from the existing to the proposed garage that "there can be no harm to the community." We do not have a list of people who have applied for additions, but there have no precedents set with regards to granting similar variances in this area.

## Sample Motions

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### *Motion to Approve*

MOTION by \_\_\_\_\_, seconded by \_\_\_\_\_, in the matter of File No. 19-043, that the request for a variance from *Section 138-5.100 (Schedule of Regulations)* of the Rochester Hills Code of Ordinances to grant a side yard setback variance of three (3) feet, Parcel Identification Number 15-14-430-010, zoned R-3 (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 because of the location of the existing house.
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 with homes at the minimum setback or less.
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 location of the current house, garage and driveway would make it difficult to apply the setback regulations and have a two-car garage, consistent with many other homes in the subdivision.

5. This variance is necessary for the preservation and enjoyment of a substantial property right that has been grandfathered.
6. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses as the location of the existing garage has been in place for over 60 years and the proposed garage would not further encroach into the setback. The variance would maintain consistency with the existing character of the home.
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. 19-043, 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 three (3) feet, Parcel Identification Number 15-14-430-010, zoned R-3 (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 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.