

AND FURTHER, clarifies that if a house exists on the subject property, the existing house shall be included in the calculations. The calculation of the established building line will include all the homes on the same side of the street within 200 feet, regardless of whether or not they are on the same block. The language of the ordinance governs over the illustrations. In calculating the established building line, the specific language of the ordinance will be followed - i.e., the 10 feet is taken off after the average is calculated.

A motion was made by Koluch, seconded by Hetrick, that this matter be Approved. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

MOTION by Hetrick, seconded by Koluch, **Moved**, that the illustrations currently involved with calculating the established building line be removed as they do not reflect the verbiage of the ordinance, and that the ordinance be rewritten and simplified so that the average homeowner and staff can understand the calculations.

A motion was made by Hetrick, seconded by Koluch, that this matter be Approved. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

2017-0221

PUBLIC HEARING - FILE NO. 17-012

Location: **281 Orchardale Dr.**, located on the southeast corner of Orchardale and Stockport Drives, south of Walton Blvd., and west of S. Livernois Rd., Parcel Identification Number 15-16-251-001, and zoned R-1 (One Family Residential).

Requests: Item #1 - A request for a variance of 12.31 feet from Section 138-5.101.B. (**Established Building Line**) of the Code of Ordinances, which states in the event there is an established building line along a street (as determined by the reviewing official), the front yard and/or side street yard setback requirement shall be the established building line, which is the average front yard setback minus 10 feet of adjacent dwellings within 200 feet on each side of the lot on the same side of the street of the subject parcel, or 60 feet whichever is less. The Building Department identified the established building line parallel to Orchardale Dr. at approximately 58 feet. Submitted plans for a proposed garage addition on the Orchardale Dr. side indicates a front yard setback of 45.69 feet.

Item #2 - A request for a variance of 12.17 feet from Section 138-5.101.B. (**Established Building Line**) of the Code of Ordinances, which states in the event there is an established building line along a street (as determined by the reviewing official), the front yard and/or side street yard setback requirement shall be the established building line, which is the average front yard setback minus 10 feet of adjacent dwellings within 200 feet on each side of the lot on the same side of the street of the subject parcel, or 60 feet whichever is less. The Building Department identified the established building line parallel to Stockport

Dr. at approximately 49.3 feet. Submitted plans for a proposed porch/family room addition on the Stockport Dr. side indicates a front yard setback of 37.13 feet.

Applicant: Amy Bunch
281 Orchardale Dr.
Rochester Hills, MI 48309

(Reference: Staff Report dated May 1, 2017, prepared by Sara Roediger, Director of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

Chairperson Colling read the request for the record, and asked the applicant to come forward and provide a summary of the request.

Ms. Amy Bunch, 281 Orchardale Dr., Rochester Hills, MI came forward, introduced herself and gave a summary of the request. She was accompanied by her husband. Ms. Bunch stated she moved into her house in 2005, and has always thought about adding on family space, not going up as there are enough bedrooms. They have talked to four architects during this time, one structural engineer about how to best design additional space, and five builders. The house was built in 1961, it's an old subdivision and the larger lots are very unique. There are a lot of wooded areas. Her property is a corner lot, and the location of the house on the lot makes it unique. Even with the addition, she is still within the setbacks of the R-1 district. Ms. Bunch indicated there is a hardship in that the garage has a pole in the center of it, and the structural engineer indicated because they live in the space above the garage, the supporting poles can not be removed. Therefore the garage can't be converted into living space. They designed the smallest footprint possible by filling in the space in the front of the house and making that the living space, which covers the entrance to their garage. Therefore, she is proposing to add a 24' x 22' two-car garage. She set the garage back about a foot so it wouldn't stick out too far, even though it's still within the setbacks. She is trying to keep the integrity of the subdivision because it's very wooded and the spacing of the houses makes the established building line a little different as far as location goes, and making sure they are not protruding on anybody's view or sight line.

Mr. Koluch asked if the extension is on the Orchardale or the Stockport side.

Ms. Bunch pointed out on the plan the living room and porch extension are on the Stockport side and the garage is on Orchardale.

Mr. Colling asked if the poles in the garage support the house.

Ms. Bunch clarified the poles support the house as the I-joist is not big enough.

Chairperson Colling indicated beams can be put underneath and supports built out to the side with the proper footings.

Ms. Bunch indicated the beam goes through the entire length of the house, and the engineers would have to go up into the floor joists above, which can't be done because they live there. The I-beam can't be made any larger either

because it already intrudes on the already short ceilings in the garage and living space.

Mr. Colling asked what the garage space with the poles will be used for once the new garage is built.

Ms. Bunch replied storage and laundry. One of the poles has to stay, that's why it won't be living space. She also mentioned that the established building line calculation is based on one house, because the homes are so far away from each other. She doesn't know if it's really fair to take one house into consideration to calculate a setback for the subject property. She also provided photos showing her property, where is proposed addition is, and the resulting view from neighboring properties. She spray-painted the ground outlining the additions so the neighbors can visualize it.

The Chairperson then called for a summary of the staff report.

Ms. Roediger indicated anytime the Board is looking at a variance request, there are a number of criteria that must be considered in terms of making a determination. Compliance with the regulations of the district would unreasonably prevent the owner from using the property as permitted - the applicant has indicated in their application that as part of a corner lot, and because of how the house is sited on the property, the proposed locations are the only realistic areas for additions on the house. The granting of the variance would do substantial justice to other properties in the area - in talking about the established building line, obviously there is some gray area in that. Ms. Roediger is curious to determine, based on the interpretation discussion the Board had tonight, if that would change the variance request as outlined this evening, because the variance request was based on the interpretation of staff before tonight's discussion.

Mr. Colling would prefer that the calculation for the established building line be made following the recommendations tonight.

Ms. Roediger said that could be done, so the request tonight may be a little difference once staff interprets the ordinance as directed tonight. The Board also must find that this situation is a unique circumstance - the applicant has indicated that because of a combination of circumstances, i.e., this is a corner lot and smaller than other properties within the same vicinity, the location of the house on the lot, and that the houses are located over 100 feet from one another. These cumulatively create a unique circumstance for this property. To prove the situation is not self-created is a challenging one to meet, but the applicant has indicated the pole and the structural integrity of the home adds some unique, not-self created situations for the existing situation. The spirit of the ordinance will be observed, public safety and welfare secured and substantial justice done criteria - the applicant states there are other homes in the subdivision that are closer to the road, and that combined with the spacing of the homes and heavily treed nature of the neighborhood, and the fact that the additions will meet district setbacks would meet the spirit and intent of the ordinance.

Chairperson Colling referred to the site plan of the property and asked if the dashed line on the plan indicates the building envelope allowed by the zoning district. Ms. Roediger indicated this was correct. Mr. Colling stated there is a substantial area that could be the building envelope on this lot were it not for the established building line setback. He also pointed that within 200 feet of the subject property, there is only one home on Orchardale, which in his mind, doesn't qualify as an established setback based upon the ordinance. He personally would ignore the Orchardale setback because the homes in question and the size of the lot have almost no bearing in this matter. The lots are of such a size that the average setback on Orchardale is not fair if you're talking one home. In looking at the home to the south of the subject parcel, the proposed addition to 281 Orchardale would not be any closer to the street than the existing structure at 333 Orchardale. And the house at 365 Orchardale is further out than 281 Orchardale would be. He does not feel the Orchardale setback has much bearing in this case.

Mr. Hetrick agreed. He drove by the home today and noticed there are a number of homes that wouldn't be part of the baseline calculation and are much closer to the road than the subject property. The applicant is well within the building envelope of the district. In his view, even though the Board recognizes the challenges with the established building line and the ordinance, this is in the spirit of what the Board is trying to do today, and that is to approve this request and move along.

Mr. Colling commented the aerial photo shows the density of the trees between 281 and 333 Orchardale. He doubts that anyone could tell the difference in the setbacks of the homes due to the foliage between them. He referred to the site plan again and commented that if using the average building setback line, it substantially reduces and penalizes this applicant. In Mr. Colling's opinion, that is definitely curtailing their property rights. He then asked if the entrance to the house could be shifted a little to west and maybe not require any variance. It would be an option.

Ms. Bunch indicated the driveway runs right next to the house, and she would prefer to leave it as is. She doesn't want to lose a lot of the yard or the mature trees. Five feet of the encroachment on Stockport is an open porch.

Based on the interpretation discussion earlier, Mr. Koluch asked staff how long it would take to refigure this variance request recalculating the established building line based on tonight's recommendations. He suggested the ZBA table this request to allow staff time to recalculate the setback, hear the next case, and come back to this issue with the updated variance request.

The Chairperson asked staff to recalculate the new established building line based on tonight's recommendations. If the house at 333 Orchardale is not used to calculate the established building line, the established building line will not be used on the Orchardale side at all.

This case was tabled at 8:50 p.m.

This case was called back to the table at 9:16 p.m.

Chair Colling indicated the recalculation is being done on both setbacks because it's going to take some kind of action by the Board if they choose to ignore the Orchardale side. If the calculation takes this side out of the picture, then it's done.

Ms. Bunch pointed out the established building setback line on Stockport doesn't run parallel to the house, and goes through the front of the house. She asked if a variance is not granted will she have to move the house back behind the line.

Mr. Colling clarified part of the house right now touches the setback line, and if the line is not parallel to the house, part of the house is nonconforming as it exists. Obviously, this home was built long before the established building setback came into play.

Ms. Bunch indicated this is a hardship for her because it gives her very little space to even build additional living space.

The Chair explained the established building line came into play after the subject house was built, which is a hardship. The reason it's a hardship is because effectively that established baseline makes the home nonconforming. When the house was built it was conforming. He does not feel it's within the purview of this Board to create a situation where the home was built in conformance and now finds itself nonconforming because the ordinance was changed and established a baseline setback that did not exist when the home was built.

Mr. Hetrick recalled the same situation occurred to a dentist office on Tienken Road. The structure became nonconforming because of the additional right-of-way. The Board granted a one foot variance in that case.

Ms. Roediger indicated that in looking at the calculations for Orchardale - if the existing house was included which has an 80 foot setback off of Orchardale, the house to the south at 333 Orchardale that has a 72 foot setback, and the house to the south of that at 365 Orchardale has a 66 foot setback - the three houses added together and averaged, then subtract the 10 feet would result in a 62.6 established building line. Along Stockport, the existing home has a 47 foot setback, the house at 1525 Stockport has a 64 foot setback, and the house at 1507 Stockport has a 61 foot setback. The three houses added together and averaged, then subtract the 10 feet would result in a 47.33 established building line. So the requested additions would still require a variance on both sides from the established building line.

Mr. Colling reiterated the house was built in 1961 and the earliest mention of an average setback line was in 1962. This house was conforming to all zoning ordinances when built. It predates the baseline calculations in the ordinance. The baseline as calculated makes the house nonconforming. He went through State of Michigan training 20 years ago, where they specifically addressed issues similar issue to this, where you have to give the homeowner the benefit of the doubt based upon situations where the home predates the ordinances. In the subject case, the baseline calculation strips off better than 50% of the

allowable building envelope on this property. It is a hardship to the owner. The baseline establishes a situation where the home is nonconforming as it exists and he feels that these things brought upon by the ordinance, are a hardship that this homeowner can't overcome and get enjoyment out of the property that a normal resident would get by constructing an addition where there is plenty of room on the property to build. As much as he hates to issue any variance in this case, his recommendation is to issue the variances with the proviso that staff uses this as a test case to inform the Planning Commission, City Council and the City Attorney's office as to the hardship this average setback situation causes. In today's environment, most homes are built on the minimum amount of land possible with the largest footprint possible. The subject home has a huge building envelope but the owner can't enjoy this same right because of the established building line. This is an infringement upon a homeowner's right.

Mr. Hetrick agreed that the Board should approve this variance request.

There was still some question about the exact amount of the variance. Mr. Colling suggested the motion be phrased to reflect "the variance amounts will be based upon the final calculations of staff", and does not list specific numbers.

A resident in the audience questioned the setback amount of the subject house from Orchardale. He indicated staff said the setback was 80 feet, but the drawings indicate 70 feet. Ms. Roediger indicated if the average setback calculations used the 70 foot setback rather than 80 feet, the average setback would result in a 59.3 setback.

Mr. Artinian indicated the setback number he used in the calculation is from a measuring software tool that staff uses, this is the only means he has to calculate the setbacks. He does not believe it's 100% accurate, but close enough to use.

MOTION by Koluch, seconded by Brnabic, in the matter of File No. 17-012, that the request for a variance from Section 138-5.101-B (Established Building Line) of the Rochester Hills Code of Ordinances to grant a front yard setback variance on the Orchardale Dr. side, and a front yard setback variance on the Stockport Dr. side, Parcel Identification Number 15-16-251-001, zoned R-1 (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 will unreasonably prevent the owner from using the property for a permitted purpose, and 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 a 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 combined factors of a corner lot, smaller than average lot for the neighborhood, presence of a heavily treed neighborhood, siting of the home on the property, because the homes are spaced over 100 feet apart, because calculation of the established building line on the Orchardale side is based upon a single neighboring property, because the established building line was adopted after the residence was completed, and strict application of the established building line automatically causes the home to be nonconforming as is.*

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 based on the unique circumstances of the property.*

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 areas.*

Conditions

Approval of the variance is subject to the following:

That the amount of the variance requested for each road identified is based upon the final calculations of staff and adheres to the site plan provided by the applicant.

A motion was made by Koluch, seconded by Brnabic, that this matter be Approved. The motion carried by the following vote:

Aye 7 - Brnabic, Chalmers, Colling, Fons, Hetrick, Koluch and McGunn

2017-0222

PUBLIC HEARING - FILE NO. 99-002

Location: 110 South Blvd. W., located on the north side of South Blvd., west of S. Rochester Rd., Parcel Identification Number 15-34-477-016, and zoned O-1 (Office Business) with an FB-3 Flex Business Overlay.

Request: A variance of 9 feet from Section 138-11.102.B.4.a. (Location of Off-Street Parking and Loading Spaces, Setback from Residential Districts) of the Code of Ordinances, which states where the parking lot abuts a residential district at the side or rear lot lines, the parking lot shall be setback a minimum of 10 feet from the lot line. The submitted parking lot maintenance plan is requesting a 9 foot westward extension to the existing parking lot, encroaching into the required side yard setback 9 feet.

Applicant: Salman Abrou
1044 Rochelle Park Dr.