



## Department of Planning and Economic Development

### Staff Report to the Zoning Board of Appeals

September 7, 2017

#### 1497 Walton Blvd. – Front Yard Setback Variance

<b>REQUEST</b>	A variance of 12.6 feet from <i>Section 138-5.101.B (Established Building Line)</i> of the Code of Ordinances to permit a front (side street) yard setback of 25 feet on the east side of Orcharddale (corner lot)
<b>APPLICANT</b>	Logu Bukurije 523 Rochdale Dr. Rochester Hills, MI 48309
<b>LOCATION</b>	1497 Walton Blvd., SE corner of Walton and Orcharddale
<b>FILE NO.</b>	17-032
<b>PARCEL NO.</b>	15-16-202-001
<b>ZONING</b>	R-1 One Family Residential
<b>STAFF</b>	Sara Roediger, AICP, Director of Planning

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#### Requested Variance

The applicant is requesting a 12.6 foot front yard setback variance on the Orcharddale Dr., side, from the Code of Ordinances to construct a new home with a 25 foot front yard setback, as measured from an Established Building Line.

*Section 138-10.101.B* states that 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 Orcharddale Dr. at 37.6 feet.

#### Site Description

The subject vacant parcel is located on the southeast corner of Walton Blvd. and Orcharddale Dr. The applicant is proposing to construct a new home.



Please see the following images 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 residential structure to be reconfigured to meet the required setbacks. The proposed structure meets the minimum 15 foot side yard setback along the eastern lot line. The applicant has indicated that due to being a corner lot, if the variance is not granted and the established front (side street) yard setback of 37.6 had to be maintained, the lot would be unbuildable.
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.* Granting of the variance would give the applicant the ability to develop their property in a way that is consistent in size with other homes in the neighborhood including the southwest corner of Orchardale and Walton across the street.
3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant indicates that because the other lots along Orchardale are long lots with houses that are set further back, and because this is a corner lot without the same depth, the established building setback results in an unreasonable building envelope on this property, that is unique to this parcel which causes the subject lot to be unbuildable.
4. *The problem is not self-created.* The applicant did not create the lot sizes and dimensions, nor the placement of the neighboring homes further back than required by ordinance and states that without a variance, the lot is unbuildable.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant states that the variance will not cause public safety or welfare concerns and will meet the spirit of the ordinance as the proposed home will still meet the minimum front (side street) yard requirement.

## Sample Motions

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### **Motion to Approve**

MOTION by \_\_\_\_\_, seconded by \_\_\_\_\_, in the matter of File No. 17-032, 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 (street side) yard setback variance of 12.6 feet on the Orchardale Dr. side, to allow new construction with a 25 foot front yard setback at 1497 Walton Blvd., Parcel Identification Number 15-16-202-001, 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 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 construction 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. Specifically, developed lots along Orchardale have greater depth than the subject property allowing for greater setbacks. The subject property is a corner lot without the same depth along Orchardale and the application of the established building setback results in an unreasonable building envelope due to the shallow depth of the site, which is unique when compared to other parcels along Orchardale.
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 File No. 17-032, 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 (street side) yard setback variance of 12.6 feet on the Orchardale Dr. side, to allow new construction with a 25 foot front yard setback at 1497 Walton Blvd., Parcel Identification Number 15-16-251-001, zoned R-1 (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 the construction 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 a home outside 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.
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.