



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

September 4, 2019

307 Michelson Rd. Road Rear Yard Setback Variance

Table with 2 columns: Field Name (REQUEST, APPLICANT, LOCATION, FILE NO., PARCEL NO., ZONING, STAFF) and Description (A rear yard setback variance of 10 feet from Section 138-5.100 (Schedule of Regulations) to allow a proposed home with a rear yard setback of 25 feet. Arkan Hallak, 43539 Holmes Dr. Sterling Heights, MI 48314, 307 Michelson, east of Rochester, south of M-59, 19-032, 15-35-326-030, R-4 One Family Residential, Kristen Kapelanski, AICP, Planning Manager)

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Requested Variance

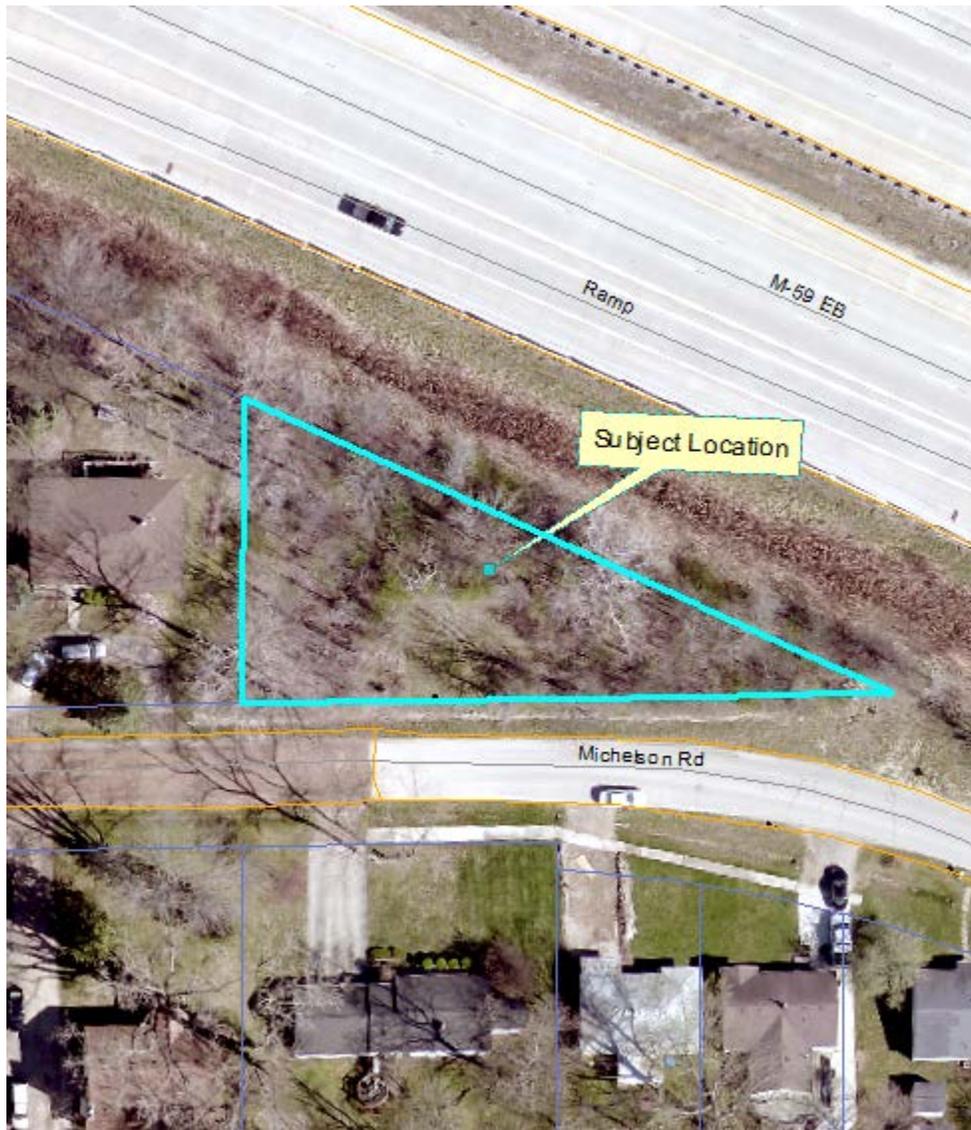
The applicant is requesting a ten-foot variance from the Code of Ordinances to construct a new home with a rear yard setback of 25 feet. Section 138-5.100 requires a 35-foot rear yard setback in the R-4 district. The applicant appeared before the Zoning Board of Appeals on August 14, 2019 with a request for a 5.76 rear yard setback and a 29.24-foot variance. The matter was postponed so that the applicant could look at alternative layouts and a lesser variance request. The applicant has now submitted plans showing rear yard setbacks of 25 feet (preferred alternative resulting in a request for a ten-foot variance) and 30 feet.

Summary

The applicant purchased the property with the intent of building a new home there. The lot is pie shaped (triangular), only 100 feet deep at its longest point and continually measures shorter toward the east. The lot is 12,085 s.f., but at least half is not usable to locate a house and meet the rear yard setback. The rear of the parcel borders the M-59 right-of-way. The applicant states that it is not possible to build a functional house for a family that meets the rear yard setback.

The proposal is to construct a 1,750 sq. ft. home (875 s.f. per floor) which could be accomplished with a 25-foot setback. If a 30-foot setback is used, the home size would drop to 1,460 (730 s.f. per floor). The applicant feels that the proposed house will be an improvement to the neighborhood.

Site Context Aerial Photograph



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 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 proposed lot, while in compliance with the Ordinance requirements for size in the R-4 district, is uniquely shaped and very narrow at some points. Compliance with the requirements of the ordinance would not prevent the owner from using the property but according to the applicant, it would prohibit the construction of a house that could be reasonably used for a family. The maximum 35-foot setback is difficult to meet across the rear of the parcel when the lot starts sloping down and could be considered an unreasonable burden.

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 layout of the lot is not typical. The lot is 225 feet wide and 100 feet deep but only at one point. It gets less deep as the lot slopes to the east. Other homes to the west have sloping back yards (due to M-59) but the yards are much deeper. There is a lot similar to the subject lot on the south side of Michelson that has a very small home on it (less than 1,000 s.f.), but other home sites in the immediate vicinity have a more typical layout.
3. *The plight of the applicant is due to the unique circumstances of the property.* As stated in #2 the parcel's orientation is wider than it is deep. The lot is pie shaped and as also stated, at its deepest point is only 100 feet and slopes down from there.
4. *The problem is not self-created.* The problem is not self-created according to the applicant because the parcel was platted that way.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* If the variance is granted it is likely that substantial justice will be done. The proposed variance is not likely to have any material impact on any other property or property owner. The rear of the property along M-59 will not have neighbors.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 19-032, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow a new house with a 25-foot (or 30 foot) rear yard setback, Parcel Identification Number 15-35-326-030, 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 Zoning Ordinance 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, those unique circumstances include the width to depth ratio of this parcel, as one example.
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. 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:

1. <Add any applicable conditions, if any>

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 19-032, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow a new house with a 25-foot (or 30 foot) rear yard setback, Parcel Identification Number 15-35-326-030, 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 of the Zoning Ordinance 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 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 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. 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.