



Department of Planning and Economic Development

Staff Report to the Zoning Board of Appeals

October 6, 2021

1835 Crestline St. Fence Height Variance

REQUEST	A height variance of 2 ft. from <i>Section 138-10.107</i> to allow for an 8 ft. high chain link fence enclosing the rear yard (maximum 6 ft. high permitted).
APPLICANT	Dale Upleger 1835 Crestline St. Rochester Hills, MI 48307
LOCATION	North of Hamlin Rd., between Livernois and Rochester
FILE NO.	21-031
PARCEL NO.	15-22-451-027
ZONING	R-3 One Family Residential with MR Mixed Residential Overlay
STAFF	Kristen Kapelanski, Manager of Planning

Requested Variance

The applicant is requesting a variance from the Code of Ordinances to permit an 8 ft. high chain link fence to enclose the rear yard, to be installed up to the front of the dwelling, set back approximately 25 ft. from the northerly side yard lot line, and located along the rear and southerly side lot lines. *Section 138-10.107 (Fences)* requires fences that are located along the side and rear lot lines to be a maximum of six (6) feet in height and may not extend closer to the front lot line than the front of the dwelling or the minimum front setback, whichever is less, unless otherwise provided for in the ordinance, thus requiring a variance to exceed the permitted height. The proposed fence location as shown on the site plan also complies with the ordinance, with the installation of the fence to be interior to an existing pole barn that is located near the northeast corner of the property. This provision also requires fence materials to be wood, metal, brick, masonry or other solid natural or synthetic material that is all-weather resistant and designed for permanent and stationary fencing or screening, and the proposed chain link material complies with this requirement. The applicant reports that there are no fences on the property currently.

The subject site is located north of Hamlin Rd., between Livernois and Rochester Rd. Below is a table for the zoning and existing and future land use designations for the site and surrounding parcels.

	Zoning	Existing Land Use	Future Land Use
Subject Site	R-3 One Family Residential/MR Mixed Residential Overlay	Residential Home	Residential 4
North	R-4 One Family Residential	Single family homes	Residential 3
South	R-3 One Family Residential/MR Mixed Residential Overlay	Single family homes	Residential 3
East	R-3 One Family Residential/MR	Single family homes	Residential 3

	Zoning	Existing Land Use	Future Land Use
	Mixed Residential Overlay	(proposed Camden Crossing condominiums)	
West	R-3 One Family Residential/MR Mixed Residential Overlay	Single Family Homes	Residential 3

Site 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.B.* provides criteria for determining if a practical difficulty exists. Please refer to the ZBA application for the applicant's responses to the following criteria.

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 requirements of the ordinance by installing a 6 ft. high chain link fence would not prevent the owner from using the property. However, the applicant states that the deer consume the flowers and vegetables in their garden, which therefore restricts their gardening activities and their enjoyment of their yard.
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 applicant could install a 6 ft. high fence in the location identified on the site plan and meet the ordinance requirements; however he claims that a 6 ft. fence would not provide a sufficient barrier from deer. Additionally he claims that allowing the higher fence will enable them to have beautiful gardens for their neighbors and others to enjoy.
3. *The plight of the applicant is due to the unique circumstances of the property.* There are no unique physical characteristics of the property. The applicant notes there is an open field behind

their home and that most other properties are not similarly situated. He explains that “the deer have all moved behind their home because of all the other building in other open areas in the vicinity”, and that the deer have nowhere else to go. A residential lot backing to an open field in the City is not a unique characteristic, and many other residential properties may experience issues with deer consuming flowers and vegetables on their property.

4. *The problem is not self-created.* The applicant states that they did not do anything to cause the problem.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant states the fence they are requesting would not be detrimental, and would allow them to make their property beautiful for everyone to enjoy. They note that they have been asked twice to be in a City garden walk, and had to decline because the deer ate all of the flowers before the day of the walk. If this variance is granted, staff believes that it could spur similar requests on other residential lots in the City.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 21-031, that the request for a variance of 2.0 feet from *Section 138-10.107* of the Rochester Hills Code of Ordinances to allow an 8 ft. chain link fence to enclose the rear yard at 1835 Crestline St., Parcel Identification Number 15-22-451-027, be **APPROVED** because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with respect to the fence height for which this variance is granted.

1. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property as has been previously enjoyed and will be unnecessarily burdensome.
2. Granting the variance will preserve a substantial property right for the applicant as has been previously enjoyed by this property owner and thus substantial justice shall be done.
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 as described in criterion 1. above, that distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations.
5. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
6. 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.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 21-031, that the request for a variance of 2.0 feet from *Section 138-10.107* of the Rochester Hills Code of Ordinances to allow an 8 ft. chain link fence to enclose the rear yard at 1835 Crestline St., Parcel Identification Number 15-22-451-027, 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 by installing a 6 ft. high fence, and no practical difficulty has been demonstrated for this property.
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 other property owners in the vicinity.
3. There are no unique circumstances of the property have been identified by the applicant 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.