

NEW BUSINESS**2017-0098 PUBLIC HEARING - FILE No. 17-003**

Location: 260 Winry Dr., located on the north side of Winry Dr., south of Tienken Rd. and west of N. Pine St., Parcel Identification Number 15-10-205-037, and zoned R-4, One Family Residential.

Request: A request for a variance of 4.7 feet from Section 138-5.100 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum side yard setback of 10 feet in the R-4, One Family Residential Zoning District. Submitted plans for a proposed addition and attached garage indicate a side yard setback of 5.3 feet.

Applicant: David & Wendy Taylor
260 Winry Dr.
Rochester Hills, M 48307

(Reference: Staff Report dated March 2, 2017, prepared by Sara Roediger, Interim 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 applicants to come forward and provide a summary of the request.

David & Wendy Taylor, 260 Winry, the applicants and homeowners, came forward introduced themselves and gave a summary of their request. They are asking to put a family room addition and attached garage on the house, which requires the side yard setback variance.

Chairperson Colling asked if there are any extenuating circumstances or practical difficulties that require the variance.

Ms. Taylor explained the lot is of a size that in order to attach the two car garage, a variance is required. There are several homes in the subdivision that already had this variance approved and the owners completed additions to their home. The proposed addition is behind their home and not near the next door neighbor's home or the house behind them.

Mr. Colling asked if there is any practical difficulty in the building envelope or the lot itself that would require a variance to build - does anything prevent the applicant from building within the allowable footprint.

Ms. Taylor replied yes. Mr. Taylor stated the subdivision is probably the smallest one in Rochester Hills. The frontage is 60 feet, the house is approximately 38 feet wide sitting within 20 feet of each side of the lot. There is no way to construct an attached two car garage and still maintain the required setback between the property line and the garage. The lots are too small to keep a 10 foot setback.

Chairperson Colling indicated this is not unique to this specific area. He lives in the Brooklands and their lots are also 60 feet wide. This lot size is not uncommon throughout the City. He is looking for a practical difficulty, e.g., an engineering defect, or the soil or some geographical feature of the property that prevents the applicant from building within the allowable building envelope. The property as described does not have a practical difficulty.

Ms. Taylor commented you couldn't pull a car into a two car garage if it was behind the house, it has to be next to the house.

Mr. Colling said he has a two car garage behind his house, although it is detached.

Mr. Taylor pointed out they are looking for an attached garage to age in place, and Ms. Taylor said they would like the house all on one story.

The Chair again asked if there is any practical difficulty or anything that can be described, other than it's something the applicants want to do.

Mr. Taylor said there is a nice sized tree in the backyard that prohibits building any further to the west of the property. Also, the way the house is laid out, there would not be an access point into the dwelling if the garage was behind the house. The problem is the attachment. Ms. Taylor explained she has MS, and she is concerned about getting in and out of the house in the future, as going up and down steps is not easy. If they could put something on the house that would get her into the garage it would be a lot easier than dealing with in and out, up and down steps.

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

Ms. Roediger clarified the staff report summarizes the criteria that the ZBA is bound to consider, one of which is substantial justice - making sure something special will not be conveyed to this property that is not shared with other property owners in the area. The homes in this area are all very similar in size, about 1,000 square feet. Over the years, there have been a number of variances granted for this exact request. In staff's quick search, four variances on Winry or Thalia have been granted for this exact situation - to allow an attached garage with a 5 foot variance off the side yard. If you look at the overall development patterns of this particular subdivision, it is pretty common. The aerial map shows the two houses west of the subject property, as well as the two houses north of it, all have similar configurations. It would be somewhat consistent with development patterns of this neighborhood over time. As far as unique circumstances, while it may not be unique to the subject parcel specifically, the neighborhood is somewhat unique in the City in that it has this development pattern over time.

Mr. Colling commented in his years on the Board, the members have generally denied similar setbacks throughout the City. If there is not a practical difficulty or engineering precedent, essentially it becomes a situation where the Board is granting a variance based upon the homeowner's request versus need. He does remember one side or rear yard setback variance granted for a property

that had a very steep ravine off one side of the house that precluded them from building in that particular area without extensive engineering re-work. The Board has actually turned down homeowners for additions of one foot into the setback. He is reluctant to grant this request, even though some variances have been granted in the neighborhood. He asked about the previous four variances that were granted.

Ms. Roediger indicated staff talked about producing the minutes from these variances, but they took place back in the 70's and 80's. The minutes are on microfiche and are not very legible. The addresses are 330 Winry, 428 Winry, 287 Winry and 376 Thalia - they all received approval of their variance requests for 5 or 6 foot side yard setbacks.

Mr. Colling asked if the zoning ordinances have changed significantly since that timeframe.

Ms. Roediger replied no and clarified she went back and reviewed the ordinances from the 70's and they all maintained a 10 foot side yard.

Chairperson Colling is rather reluctant to grant this only from the standpoint that the Board has denied other homeowner requests in the past for this situation. Even though variances were granted in the 70's and 80's, in his 20 years on the Board, these types of requests have been denied.

The floor was opened for Board discussion.

Mr. Hetrick stated that based on Ms. Roediger's comments on precedence already being set by granting variances in the past, he is more inclined to grant this variance given that the applicant is doing something that is consistent with what their neighbors have already accomplished. He noted the homes adjacent to the subject property appear to have setbacks that are less than 10 feet. While the Board has generally not granted these variances in other places that may have larger lots, he feels the applicant's practical difficulty is their lot size, whereby being able to put in a garage that suits their needs, their choices are very limited. He is inclined to support the variance, and suggested striking finding #4 from the sample motion if a motion is made to approve.

Mr. Chalmers understands the applicant's ailment and the need to get from the inside of the garage into the house and the need for additional space for the family. He asked if the applicants could accomplish what they wanted to do with a one car garage. He feels what the issue comes down to is the second car garage will now encroach into the setback to the east. He is not inclined to support the applicant.

Mr. Fons indicated he drove through the neighborhood today and saw close to a dozen homes that were remodeled in the same way the applicant is proposing, and some had only 5-6 foot side yard setbacks to other structure. He thinks it would be unfair to the applicant to deny them when the next door neighbor has the exact same configuration.

Mr. McGunn agreed with Mr. Fons and asked if anyone has built an addition and

a two car garage while meeting the required setbacks in this neighborhood.

Ms. Roediger advised staff did not review building permits to see how many additions met the ordinance requirements. Staff did however, research the records to see if there have been any addition permits issued for this area in the last seven years, and there was not.

Mr. McGunn said it appears to him, in spite of the zoning requirement, that the character of the neighborhood would support getting closer than 10 feet to the lot line, so he is inclined to approve the request.

Mr. Colling pointed out that the Board denied a similar couple a two foot variance so they could put a full size couch in an addition to their family room off the back of the house. There was also another situation where a corner addition extended one foot over the setback and that request was denied. The Board has to think of not only the people in the subject neighborhood, but throughout the City that have been denied. Precedence has been set for the last 20 years that there must be a practical difficulty in order to approve variances. He feels it is unfair to individuals who came to the Board before and were denied, to turn around and grant a variance because of the character of the neighborhood. The City can't have a zoning ordinance that applies to just one neighborhood, and not throughout the entire City.

Mr. McGunn disagreed, thinks each situation is unique, and the character of the neighborhood is not going to be adversely affected by this addition.

Chair Colling understands this argument as he had a similar situation with his home and a 60 foot lot, and had to work with Council to change the ordinance in R-4 zoning for front yard setbacks in order to get a front porch put on his home. This ordinance change prompted an increase in permits for renovations in the Brooklands Sub. He still feels in fairness to individuals who have been denied for lesser variances, the Board can't approve this. If there was a practical difficulty in this case, he would be willing to grant the variance. But this is a matter that is self-created; it's something the homeowner wants to do. Other designs exist that could be done within the building envelope of the property.

Mr. Hetrick noted the applicants did not have an opportunity to respond to Mr. Chalmers' question about if a one-car garage would accomplish what they wanted, and asked if they could put a one-car garage on the house.

Mr. Taylor responded yes, currently he has a one-car garage and there is room to connect it to his home. Ms. Taylor added anyone could build a one-car garage, but they own two vehicles. They have been waiting 20 years to have a two-car garage, and didn't realize the setback requirements when they purchased the home. With everybody else having a two-car garage, 20 years is a long time to wait to have the money to build it. Mr. Taylor indicated he would like a two-car garage, but a one-car garage or a two-car detached garage is an option, but it's not what they want.

Mr. Hetrick drove through the neighborhood and commented there were far more than four homes that have garages closer than 10 feet to the property line.

Mr. Chalmers added that it is up to the applicant to show the distance of those setbacks and the years they were built.

Mr. Hetrick pointed out staff gave four examples.

Chairperson Colling commented the four examples are from the 70's and 80's, which is almost 40 years ago. He is more concerned about how many of these variances have been granted by the in the past 20 years. He stressed there can't be a situation where you have one set of rules in one area of the City and another set somewhere else. Rules must be consistent across the board, all citizens must be treated equally, and if the Board holds the line on variances anywhere within the City for this particular reason, it has to be done tonight as well, irrespective of what happened 40 years ago.

Mr. Hetrick disagreed because precedent was set for this neighborhood in terms of variances.

The Chair indicated precedent has been set in the City for the past 20 years as well. If the variance was granted, it gives anyone who has been ever denied in the City, cause to come back to the Board and reopen their case. He is not willing to do that.

MOTION by Hetrick in the matter of File No. 17-003, 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 4.7 feet, Parcel Identification Number 15-10-205-037, 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 restrictions governing the minimum setback for attached accessory buildings 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. 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.*
- 5. This variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the neighborhood.*
- 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.

There was no second to the motion.

MOTION DIED FOR LACK OF A SECOND.

MOTION by Chalmers, seconded by Fons, in the matter of File No. 17-003, 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 4.7 feet, Parcel Identification Number 15-10-205-037, 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 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 addition and 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.

A motion was made by Chalmers, seconded by Fons, that this matter be Denied.
The motion carried by the following vote:

Aye 4 - Chalmers, Colling, Fons and McGunn

Nay 1 - Hetrick

Absent 2 - Brnabic and Koluch

2017-0099

SIGN BOARD OF APPEALS

PUBLIC HEARING - FILE NO. 93-382.4

Location: 1015 E. Auburn Rd., located on the northeast corner of Auburn and John R Roads, Parcel Identification Number 15-25-351-041, and zoned B-5, Automotive Service Business, with an FB-2 Flex Business Overlay.

Request: A variance to allow a panel change to an existing nonconforming sign pursuant to Section 134-107(5)b., which indicates nonconforming signs or sign structures shall be removed when the name of the premises or business the nonconforming sign pertains to changes. The submitted sign permit application is requesting a name/panel change for a new business on an existing nonconforming sign from Marathon to Mobil.

Applicant: David Hardy
Hardy & Sons Sign Service
22340 Harper
St. Clair Shores, MI 48080

(Reference: Staff Report dated March 3, 2017, prepared by Sara Roediger, Interim 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.

Mr. David Hardy, Hardy & Son Sign Service, 22340 Harper, St. Clair Shores, MI, the applicant and Mr. Ziad Koza, owner of East Auburn Investment, LLC, and Auburn Convenience, Inc., the property owner, came forward, introduced themselves and gave a summary of their request. Mr. Hardy indicated people buy gas because of the price. The sign has to show the brand and the price of the gas. Ground signs are fine for big-name companies, like restaurants and CVS. People have to be able to read the gas price as a survey showed that 75% of people purchase gas based on the price. The sign at the Walton and Adams station is a ground sign, and Mr. Hardy indicated he can't see the sign from Adams Road because it is so low, and he had a tough time seeing the sign traveling east on Walton Blvd unless he was in the right hand lane. A customer has to be able to see the sign in time to make the turn into the business. The subject sign has been on site for 35 years, the columns have been bricked in, and it's a very nice sign. The sign is 80 square feet, and only 50 square feet is allowed. The sign would have to be a lot smaller and only seven feet tall to conform. The sign would have to be turned in order to be seen mainly from one road. The sign can't be turned because one post would be in the driveway. Lowering the sign would be very difficult on this site. Mr. Hardy referred to the