



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

March 19, 2014

1927 E. Auburn Road Rear Yard Variance	
REQUEST	A variance of 13 feet from the 25-foot rear yard setback requirement of Section 138-6.303(A)(2) of the Code of Ordinances to allow a building with a setback of 12 feet from the rear property line
APPLICANT	Mr. Syed Ahmed
LOCATION	1927 E. Auburn Road
FILE NO.	13-005
PARCEL NO.	15-25-482-021
ZONING	CI – Commercial Improvement
STAFF	Jim Breuckman, AICP, Manager of Planning

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Requested Variance

The applicant is requesting a variance from the rear yard setback requirement of Section 138-6.303(A)(2). The site is located at the northwest corner of Auburn and Hessel, and is zoned CI. In the CI district a 25 foot rear yard setback is required. The requested variance of 13 feet would allow for a 12 foot rear yard setback.

Summary

The property owner has operated a used car business on the site for less than 1 year. Used car sales are a conditional land use in the CI district, requiring approval by City Council following a recommendation by the Planning Commission. The property owner sought approval to use the site in its existing state, and agreed to a condition that not more than 5 cars be displayed for sale to ensure that cars would remain on the aggregate-surfaced portion of the site. The east parcel, where the Office+3 bay service building is shown was the parcel included in the site plan and conditional use approval.

Subsequent to that approval, the applicant has secured the larger parcel to the west and is proceeding with plans to expand the use. The expansion will require a new site plan and conditional use approval. The property owner is showing a proposed office+3 bay service building with a setback of 12 feet from the rear property line at its northwest corner.

Site Context

The following photograph shows the existing conditions on and around the subject site.



A variance was granted to the rear yard and numerous other setback requirements for the gas station to the east, across Hessel, in 2007. Minutes from when that site was before the ZBA are attached. However, it is important to note that the gas station site is zoned B-5 and is in another zoning district. The variances granted for the gas station site allowed the redevelopment of an old, obsolete gas station, recognizing that the City had adopted new B-5 setback requirements in between the time that the original gas station was built in 1971 and when the site was proposed for redevelopment in 2007. The new setback requirements, along with additional right-of-way acquired for Auburn Road, made the site unbuildable according to the B-5 requirements.

The subject site is in the CI district which requires a 25 foot rear yard setback but has a 0-foot front and side yard setback requirement. This is a very different situation from the gas station site, as plenty of space exists on the site to accommodate a new building without requiring a variance.

Development in this area largely pre-dates the adoption of the Avon Township's first modern zoning ordinance in 1962. Prior to 1962 there were no setback requirements for commercial development, meaning that the CI district contains a variety of different building dispositions within the sites.

Nonetheless, most sites comply with the 25 foot rear yard setback. A few sites have rear yard setbacks between 20 and 25 feet, and a few sites are built up to the rear property line. Refer to the attached aerial photographs which identify sites within the Old Town area that do not comply with the 25-foot rear yard setback requirement, along with the year built for each nonconforming structure. The maps note that all properties zoned CI that do not comply with the 25 foot rear setback requirement were built before 1963 (based on an aerial photograph from 1963), strongly indicating that **all structures in the CI district that do not meet rear setback requirements were built before the establishment of setback requirements in the 1962 Avon Township Zoning Ordinance.**

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.* There is ample space on the site to locate the building while still meeting the rear setback requirement. There are no front or side yard setbacks, meaning that the rear yard setback is the only ordinance limitation on where the building may be placed.
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.* Approving the variance request would provide a special benefit to the property owner not enjoyed by any other property in the CI district, excepting those parcels which contain structures built prior to the adoption of the rear yard setback requirement.
3. *The plight of the applicant is due to the unique circumstances of the property.* There are no unique circumstances of the property.
4. *The problem is not self-created.* The problem is self-created due to the applicant's desire to push the building back on the site.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* Granting the variance would be contrary to the spirit of the ordinance, and would not result in substantial justice being done for the property owner *and* other property owners in the CI district.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 13-005, that the request for a variance from Section Section 138-6.303.A.2 (rear yard setback requirement in the CI district) of the Rochester Hills Code of Ordinances to grant a variance of 13 feet from the rear yard setback requirement, Parcel Identification Number 15-25-482-021, zoned CI (Commercial Improvement), 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 rear yard setback for principal buildings will make the existing site difficult to redevelop.
2. Granting the variance will do substantial justice to the applicant as well as nearby property owners.
3. A lesser variance would not allow for the orderly redevelopment of the site.
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, _____.
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.

Conditions of Approval. Approval of the variance is subject to the following conditions:

1. The property owner shall obtain site plan and conditional use approval from the Planning Commission and City Council.
2. The building shall only be used for servicing cars for sale, and shall not be used for servicing cars for the general public or cars not being offered for sale on the site.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 13-005, that the request for a variance from Section Section 138-6.303.A.2 (rear yard setback requirement in the CI district) of the Rochester Hills Code of Ordinances to grant a variance of 13 feet from the rear yard setback requirement, Parcel Identification Number 15-25-482-021, zoned CI (Commercial Improvement), be **DENIED** 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 rear yard setbacks will not prevent the owner from using the property for a permitted purpose in a reasonable manner, and will not be unnecessarily burdensome.
2. There are no unique circumstances of the property that necessitate granting the variance.
3. 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.
4. 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.
5. Approval of the requested variance would not provide substantial justice to nearby property owners by the fact that it will impair the supply of light and air to adjacent properties, increase congestion, provide a special benefit to the applicant not enjoyed by other property owners in the CI district, and/or impair established property values in the surrounding area.