



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

April 4, 2012

2666 Leach Garage Setback Variance	
REQUEST	A variance from Section 138-10.102(B) of the Code of Ordinances to permit a detached accessory structure with a one foot side yard setback
APPLICANT	Tracy Parker 2666 Leach Road Rochester Hills, MI 48309
LOCATION	West side of Leach Road between Adams and Auburn
FILE NO.	12-003
PARCEL NO.	15-30-451-013
ZONING	I - Industrial
STAFF	Jim Breuckman, AICP, Manager of Planning

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Requested Variance

The applicant is requesting a four-foot side yard setback variance from the Code of Ordinances to permit a detached accessory structure in the rear yard with a one-foot side yard setback. Section 138-10.102(B) requires detached structures accessory to a residential building to have a 5 foot side yard setback.

Site Description

The site is located on the west side of Leach between Adams and Auburn roads. The lot has an area of 19,259 square feet and has an approximate dimension of 67.5' by 286'. The lot is a typical of those found along Leach Road. Uses along Leach are varied as the entire area is zoned Industrial but contains a mixture of industrial, residential, and other uses.

Many properties along Leach Road have a detached accessory building and/or outdoor storage or use areas. Aerial photographs indicate that many detached accessory buildings likely have less than 5-foot side yard setbacks.

Aerial photograph of site and surroundings:



Summary

This case has been ongoing since 2004. In September of 2004 the City responded to a complaint that a garage was being built without a permit. On 9/27/2004 the owner applied for a building permit which was issued on 10/14/2004. The information provided with the building permit application indicated that the proposed building was to be located 7.5 feet from the property line, and so the garage was not constructed in compliance with the approved building permit.

Inspections were completed on 12/27/04, 12/29/04, and 3/22/05 but the final inspection was never fully approved.

On 1/3/12 a complaint was filed by the property owner to the south stating the detached garage was too close to the property line. The City followed up with Mr. Parker and a certified survey was completed to verify the location of the accessory structure. The new survey shows the structure located one foot from the property line.

It should be noted that per the MRC 2003 Code, Section 302 several building code requirements must be met if the building is located less than 3' to the property line including fire rating the exterior walls, limiting the size of eave projections which also must be fire rated, limiting the amount and type of openings in the walls that are located less than 3' from the property line, and special treatment of the penetrations in the walls. This is noted because the structure does not currently meet all of these conditions, and even if the variance is granted the structure will have to be upgraded to meet the conditions of Section 302.

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.* Compliance with the ordinance would require the garage in question to be relocated 4 feet to the north. There is room on the property to move the structure, notwithstanding the considerations of cost to pour new foundations and to move the structure.
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 the variance will not create a unique situation along Leach Road as detached accessory structures exist with setbacks of less than five feet on other parcels in the area. Many parcels in the area have accessory structures that do comply with the setback requirements of the ordinance. It is unknown when the existing nonconforming structures in the area were constructed, or if they complied with the requirements of the ordinance in effect at that time.

A lesser variance would not give substantial relief to the applicant as he would still have to move the structure and at that point there would be no functional benefit of a lesser variance compared to complying with the Ordinance.

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 applicant erected the garage and so the problem could be considered self-created.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* Granting the requested variance will allow for a detached accessory structure with a one foot setback, and so consideration of the variance must take into account the potential for the variance to spur similar requests on surrounding properties and implications for the future enforcement of the ordinance.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 12-003, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to reduce the side yard setback requirement by 4 feet, Parcel Identification Number 15-30-451-013, zoned I (Industrial), 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 side yard setback for detached 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. 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. 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. 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.
7. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
8. 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. The garage is brought into compliance with Section 302 of the building code. Building department final inspection and approval shall be obtained within 12 months of the date of approval of the variance. If such approval is not obtained, the variance shall expire and the garage shall be removed or brought into compliance with ordinance setback requirements.
2. Any other conditions deemed appropriate by the ZBA.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 12-003, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to reduce the side yard setback requirement by 4 feet, Parcel Identification Number 15-30-451-013, zoned I (Industrial), 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 location for detached 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 a detached accessory structure in the front yard, and accessory structures on nearby properties comply with ordinance requirements. Thus, the variance would confer a special benefit on the applicant that is not enjoyed by the 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 his desire to construct additional accessory building area 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 will 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.