



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

May 3, 2012

430 W Hamlin Accessory Structure Area Variance

REQUEST	A variance from Section 138-10.102(A) of the Code of Ordinances to permit detached accessory buildings with a total area of 2,350 square feet
APPLICANT	Father & Son Construction (on behalf of Mr. Nicholas Pathenos) 5032 Rochester Road Troy, MI 48098
LOCATION	North side of Hamlin between Rochester and Livernois Roads
FILE NO.	12-005
PARCEL NO.	15-22-451-002
ZONING	R-3 One Family Residential
STAFF	Jim Breuckman, AICP, Manager of Planning

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Requested Variance

The applicant is requesting a 576 square foot variance from the Code of Ordinances to permit a detached accessory structure in the rear yard with a total area of 576 square feet. Section 138-10.102 and 138-10.105(A) limit detached structures accessory to a residential building on lots greater than two acres to 1,520 square feet of accessory building area. The existing accessory building is a lawful nonconforming building constructed prior to the adoption of the current ordinance standards, and therefore the variance request is for 576 square feet to construct a new garage.

Site Description

The site is located on the north side of Hamlin between Rochester and Livernois. The site is located in the Hamlin Place Farms subdivision, platted in 1916 and one of the oldest plats in the City. The plat consists of 20 lots on the north side of Hamlin Road, with 5 lots being located east of Rochester Road (the current Bordine’s Nursery site), and 15 lots on the west side of Rochester Road. At the time of platting the lots were 5 acres in area, although subsequent right-of-way expansion has reduced the subject site to approximately 4.83 acres in area.

For the purposes of this report, the term “neighborhood” refers to the 11 residentially used lots within the Hamlin Place Farms plat, which are materially different in character from other nearby post-war small-lot subdivision development. Further, of the 11 residentially used parcels in the neighborhood, just 5 retain their originally platted 5-acre size, the remaining 6 parcels are smaller due to later splits.

Summary

The applicant indicates in his application that the house on the site was constructed in 1918. There are past remnants of agricultural activity on the site, most notably the old silo. Based on a survey of historic aerial photographs the existing barn was constructed between 1974 and 1980, and at the same time it appears that an enclosure or paddock was created suggesting that horses or other livestock were once kept at the site.

Following is an aerial showing the site, the house, the barn, and the fenced enclosures behind the barn:



As is to be expected in an area that long predates adoption of the first zoning ordinance, many of the other lots in the neighborhood also exceed ordinance accessory building limits. Following is a summary of the 5 intact-as-platted lots within the subdivision:

Address	Site Area	Detached Accessory Building Area
430 W. Hamlin	4.83 acres	1,774 sq. ft. (1 building)
550 W. Hamlin	4.86 acres	1,790 sq. ft. (2 buildings)
582 W. Hamlin	4.85 acres	2,050 sq. ft. (2 buildings)
642 W. Hamlin	4.85 acres	0 sq. ft. (redeveloped site)
674 W. Hamlin	3.87 acres	2,235 sq. ft. (2 buildings)

A final consideration is the potential past use of the property for agricultural and private stable uses. Those uses are permitted in the R districts subject to dimensional standards which the subject site can meet. Were the barn used as a stable, it would no longer be considered an accessory building because it would be part of a principal permitted use in the ordinance. If that were the case, a garage could be permitted because the status of the barn would change from accessory to principal building.

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 existing barn is not ideally situated to serve a garage function on the lot, and the barn was not constructed by the current property owner. The existence of the barn precludes the construction of a garage in a customary location close to the house, which could serve as an unnecessary burden. The ZBA should also consider if dismantling all or part of the barn to allow the construction of a garage is a reasonable expectation.
- 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 within the Hamlin Place Farms subdivision, as other similar parcels with approximately 5 acres in the surrounding neighborhood already have multiple detached accessory structures larger with total areas ranging from 1,790 to 2,235 square feet. The subject site already has 1,773.57 square feet of accessory building area and approval of the variance would result in 2,350 square feet of accessory building area, which would exceed that which exists on any other parcel in the neighborhood. A lesser variance could potentially provide substantial relief to the applicant, although the proposed garage is already on the small side for being a functional garage.
- 3. The plight of the applicant is due to the unique circumstances of the property.* The Hamlin Place Farms subdivision is one of the few areas of the City where agricultural and stable uses are still feasible, and further, it is possible that the site accommodated a stable use in the past.
- 4. The problem is not self-created.* The barn existed when the applicant purchased the property and so the problem is not technically 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 functional garage on the site. 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, while balancing

those considerations with the practical limitations provided by the agricultural nature of the existing accessory building on the site.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 12-005, that the request for a variance from Section 138-10.105 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 576 square feet, Parcel Identification Number 15-22-451-002, zoned R-3 (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 maximum area for detached accessory buildings 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 Hamlin Place Farms subdivision.
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, the remaining structures from the site's agricultural past are a unique condition within the City.
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.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 12-005, that the request for a variance from Section 138-10.105 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 576 square feet, Parcel Identification Number 15-22-451-002, zoned R-3 (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 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 for a greater total accessory building area than any other parcel in the Hamlin Place Farms subdivision. 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.