



Department of Planning and Economic Development

Staff Report to the Zoning Board of Appeals

November 3, 2021

3610 Dearborn Ave. Front Setback Variance

REQUEST	A variance from Section 138-5.100 Schedule of Regulations of the Code of Ordinances, which requires a minimum 25 ft. front yard setback in the R-4 zone district. The plans submitted are for a proposed porch with a roof encroaching 15 ft. into the required setback.
APPLICANT	Charles & Katherine Leonard 3610 Dearborn Ave. Rochester Hills, MI 48309
LOCATION	West of Livernois and north of South Blvd.
FILE NO.	21-032
PARCEL NO.	15-33-402-019
ZONING	R-4 One Family Residential
STAFF	Kristen Kapelanski, Manager of Planning

Requested Variance

The applicant is requesting a variance from the Code of Ordinances to permit a front porch with a roof encroaching 15 ft. into the required minimum 25 ft. front yard setback as required by *Section 138-5.100 (Schedule of Regulations)*. The proposed porch will replace a smaller existing porch in the same location. The applicant reports that the existing home is located 18 ft. from the front property line so it is currently nonconforming to the setback requirement.

The subject site is located west of Livernois Rd. and north of South Blvd. 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-4 One Family Residential	Residential Home	Residential 4
North	R-4 One Family Residential	Single family homes	Residential 4
South	R-4 One Family Residential	Single family homes	Residential 4
East	R-4 One Family Residential	Single family homes	Residential 4
West	R-4 One Family Residential	Single Family Homes	Residential 4

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 would not allow the homeowners to construct any porch at the front of their home, since the home is already nonconforming and encroaches 7 ft. into the required front yard setback per the site plan submitted. The homeowners are looking to replace a smaller existing front porch that encroaches the same amount, noting that the steps to the current porch are an eyesore and unsafe. They also note that the small size of the existing porch does not allow for standing on the landing while opening the door.
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.* In order to maintain the structure's existing nonconforming status, the homeowners could only maintain the current porch which they note is in disrepair. They cannot install a new porch and meet the front setback requirements since the home is already encroaching into the front setback.
3. *The plight of the applicant is due to the unique circumstances of the property.* There are no unique physical characteristics of the property. However the homeowner notes that the

proposed porch is necessary to access the front entrance of their home.

4. *The problem is not self-created.* The homeowner states that the home was constructed in 1941, and noted that the setbacks changed after Avon Township became the City of Rochester Hills.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant states the porch they are requesting would not affect public safety or welfare, and that it would prevent possible safety issues while entering the front of the home.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 21-032, that the request for a variance of 15 feet from *Section 138-5.100* of the Rochester Hills Code of Ordinances to allow for the construction of a front porch with a roof at 3610 Dearborn Ave., Parcel Identification Number 15-33-402-019, 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 porch encroaching into the front setback 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. 21-032, that the request for a variance of 15 feet from *Section 138-5.100* of the Rochester Hills Code of Ordinances to allow for the construction of a front porch with a roof at 3610 Dearborn Ave., Parcel Identification Number 15-33-402-019, 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 maintaining the existing front porch 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.