

**City of Rochester Hills
Department of Planning**

STAFF REPORT TO THE ZONING BOARD OF APPEALS

March 9, 2011

1101 W. University Drive Setback Variance	
APPLICANT	Crittenton Hospital Medical Center 1101 W. University Drive Rochester Hills, Michigan 48307
LOCATION	1101 W. University Drive
SIDWELL	15-15-101-003
FILE NO.	89-153.9
ZONING	SP – Special Purpose
STAFF	Ed Anzek, Director, Planning & Economic Development
REQUEST	See variance request described below

SITE DESCRIPTION

The subject site is located on the south side of University Drive, east of Livernois Road. The subject site is zoned SP (Special Purpose) and is developed as the Crittenton Hospital Medical Center.

The parcels to the north across University Drive are zoned B-2 (General Business) and RM-1 (Multiple Family Residential); the parcels to the west are zoned B-3 (Shopping Center Business), O-1 (Office Business) and SP (Special Purpose); the parcels to the south are zoned RM-1 (Multiple Family Residential); and the parcels to the east lie within the City of Rochester and are used as a church and playfield to the northern boundary and single family for the rest of the parcel line.

The subject site is presently developed with the hospital, a medical office, surface parking as well as a parking structure and the associated activities of a hospital.

REQUESTED ITEMS

Item #1: A request for a variance of 95 feet from Section 138-5.100 (Schedule of Regulations) in conjunction with Section 138-4.415 (Hospitals) of the Code of Ordinances, which requires a cumulative side yard setback of 170 feet for an eight

story building in the SP, Special Purpose Zoning District. The application for a proposed addition to the existing building indicates a side yard setback of 75 feet.

SUMMARY

The applicant has provided a thorough summary of the proposed addition.

By way of history the following is provided. According to documentation contained within the file a Conditional Land Use Permit and a side yard variance of 100 feet has previously granted. I will refer members to the attached chronology prepared by Pat Goodwin in 1995. For those members not on the ZBA at the time, Ms. Goodwin was the previous Planning Director. The conclusions rendered by Ms. Goodwin were further substantiated by the City Attorney, John Staran. That 1995 letter is also attached. In recent conference with Mr. Staran, he and I concurred that the 100 foot variance, as it was granted in 1971, is applied to the eastern side yard setback requirement for the total length/depth of the property.

Please note that the height of 8 stories is not in question. Eight stories are permitted when the use is a hospital and some additional setback is provided. In this case the total required setback is 170 feet. In 1971 the side yard setback was 200 feet of which half was varied.

It is staff's opinion that it would be best for continuity and clarity of record that any consideration for a variance today be based on today's standards; not those of 1971. It is not meant to be confusing but to establish a clean record. To that end we have recommended to the applicant that any variance sought be based on the 170 foot side yard setback. The fact that a 100 foot variance had been previously granted cannot be ignored but it makes for very cumbersome calculations if we tried to factor it in this request.

The identification of an increased encroachment into the previously established 100 foot side yard setback was identified when a "sweeping" radius is measured from the southwestern parcel corner toward the proposed tower. This corner is located 719 feet south from the very northeastern corner near University Drive. At this point the parcel takes an eastward direction for 179.7 feet. The corner that this proposed tower encroaches into is the playfield for the St. John Lutheran Church. The closet single family parcel is 254.7 feet from the proposed tower ($179.7' + 75' = 254.7'$).

Although staff has not been able to substantiate, we have been told that the required side yard setback per Rochester's Code is 65 feet for an eight story building. This information is only offered since the eastern parcel line at the northern portion is the corporate boundary between Rochester Hills and Rochester.

Please see attached application and letter from the applicant for additional information and details regarding this request.

ORDINANCE REQUIREMENTS

Section 138-5.100 (Schedule of Regulations) in conjunction with Section 138-4.415 (Hospitals) of the Code of Ordinances requires a cumulative side yard setback of 170 feet in the SP Special Purpose Zoning District (an additional 20 feet for each story over 2 is added to the required 50 feet of side yard setback).

Setbacks are measured from the parcel line. The proposed 8-story addition to the existing building will result in a side yard setback of 75 feet as measured at the parcel corner. The parcel corner, as used herein is the eastern NS line that takes a turn to the east for 179 feet.

Section 138-2.407(Dimensional Variance), subsection (A) (Authority) states:

- A. The Zoning Board of Appeals may grant a dimensional (nonuse) variance to provide relief from a specific standard in this Ordinance relating to an area, a dimension or a construction requirement or limitation, upon the concurring vote of a majority of the members of the Zoning Board of Appeals.

Section 138-2.407, subsection (B) (Practical Difficulty) states:

- B. Practical Difficulty. A nonuse variance shall not be granted unless the Zoning Board of Appeals finds that there is practical difficulty in the way of carrying out the strict letter of this Ordinance. In determining whether a practical difficulty exists, the Zoning Board of Appeals must find that:
 1. Compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, 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.
 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.
 3. The plight of the applicant is due to the unique circumstances of the property.
 4. The problem is not self-created.
 5. The spirit of this Ordinance will be observed, public safety and welfare secured, and substantial justice done.
 6. There is compliance with the standards set forth in Section 138-2.400B.

7. There is compliance with the standards for discretionary decisions as contained in Section 138-2.302 of this Ordinance. (Note: Section 138-2.302 applies to “conditional use approval” which is not part of the subject request).

Section 138-2.400B states:

- B. **Review Considerations.** In consideration of all appeals and all proposed variances to this Ordinance, the Zoning Board of Appeals shall, before granting any variance to this Ordinance in a specific case, first determine that the proposed variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City.

ANALYSIS

Side Yard

1. Avon Township has previously granted a 100 foot variance for the side yard setback along the eastern property line in 1971 in support of Crittenton Hospital Medical Center.
2. The proposed tower projects an additional 25 feet into the 100 foot side yard setback as established by variance.
3. Using current development standards the required setback is 170 feet. The requested variance is for 95 feet resulting in the difference of 75’ of proposed remaining setback from what is sometimes termed an “inside corner”. The majority of the tower will be 250 feet from the nearest side yard parcel line.
4. The proposed variance is the minimal necessary to facilitate the proposed medical/patient tower expansion.
5. It is Staff’s opinion that, if granted, the spirit of the Ordinance will be observed, public safety and welfare preserved, substantial justice done, and no adverse affect will result on any adjacent properties. Particularly since the closest residential parcel is over 250 feet in distance and the side yard encroachment occurs on a playfield.

General

1. The applicant has identified, on the submitted attached application, additional reasons for the requested variance, and that the variance would allow for the enjoyment of a substantial property right that would be denied if not granted the variance.

2. It is Staff's opinion that the variances as proposed represent the minimal necessary to accommodate the required expansion and meet the spirit of the City's Ordinance.

Sample Motion Wording

(Board to decide if applicable during meeting discussion)

MOTION in the matter of File No. 89-153.9, that the request for a variance of 95 feet from Section 138-5.100 of the Schedule of Regulations in conjunction with Section 138-4.415 (Hospitals) of the Rochester Hills Code of Ordinances to allow an addition to the existing building be *granted/denied* for 1101 W. University Drive, Sidwell 15-15-101-003, with the following findings [and conditions – *only need conditions if approving*]:

Findings:

1. A practical difficulty has been demonstrated for the subject property based on changes that have occurred to the best management practices, licensing standards, and the community's desire to have the best medical care and treatment available within reason. Specifically, compliance with the strict letter of the restrictions governing setback requirements will unreasonably prevent the applicant from using the property for its permitted purpose and conformity with the setback restrictions are unnecessarily burdensome. **(Approval)**
 1. No practical difficulty exists, or has been demonstrated, for this property or parcel. Specifically, no unusual property characteristics impair the appropriate use within the building envelope as stipulated regarding why it is necessary to encroach into the required side yard setback. **(Denial)**
 2. Granting the variance will preserve a substantial property right for the applicant as enjoyed by others, and thus substantial justice shall be done. The Board has determined, based on the documentation submitted by the applicant that the setback variance is necessary in order to meet the Zoning Ordinance requirements. **(Approval)**
 2. The granting of the variance is not necessary for the preservation and enjoyment of a substantial property right possessed by property owners in the same zone or vicinity. **(Denial)**
 3. The granting of the variance is based on the unique circumstances of the property as presented by the applicant and noted in Finding #1 above. **(Approval)**
 3. No unique circumstances of the property have been identified by the applicant. **(Denial)**
 4. The problem is not self-created by the property owner. **(Approval)**

4. The problems are self-created by the property owner in the form of the applicant's desire to construct an addition to an existing nonconforming structure of a size and configuration that does not meet City Ordinance requirements or conform to all applicable City Codes and Ordinances. **(Denial)**
5. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion on public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles or create any particular concern with the travelling public; or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City for all of the reasons stated above. **(Approval)**
5. The granting of the variance would be materially detrimental to the public welfare or materially injurious to the property in such Zoning District in which the property is located by establishing a precedent that could be cited to support similarly unwarranted variances in the future. **(Denial)**

Conditions: [only use with motion to approve]

1. The granting of this variance is based on the site plan stamped as "received by the City of Rochester Hills Planning Department dated February 17, 2011.
2. The addition shall conform to all applicable Codes and Ordinance Requirements, and all applicable permits shall be obtained from the Building Department.