



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

October 3, 2013

1901 Clear Point Court Rear Yard Setback Variance

REQUEST	A rear yard setback variance of 2.96 feet from Section 138-5.100.T (Schedule of Regulations) to allow an attached covered porch with a rear yard setback of 27.04 feet.
APPLICANT	Doug Selke 1901 Clear Point Court Rochester Hills, MI 48306
LOCATION	1901 Clear Point Court (north of Tienken, east of Brewster)
FILE NO.	13-013
PARCEL NO.	15-04-302-025
ZONING	R-2 One Family Residential
STAFF	Jim Breuckman, AICP, Manager of Planning

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Requested Variance

The applicant is requesting a variance from the Code of Ordinances to permit an attached covered porch with a rear yard setback of 27.04 feet.

Section 138-5.100.T requires a 30-foot rear yard setback in the R-2 district when a property borders on land permanently dedicated for park and/or open space purposes. Thus, a variance of 2.96 feet from the rear yard setback requirement is requested.

Summary

The proposed covered porch would replace an existing deck located on the site (refer to Sheet T1). The footprint of the porch is smaller than the existing deck, but requires a variance because it is proposed to be covered. Unenclosed and uncovered decks or patios are not subject to the setback requirements of the ordinance; however, covered porches are subject to the setback requirement for principal buildings.

The application notes that the porch has been reduced in size as much as possible while still being large enough to accommodate a table and a grill. The application further states that the covered porch is desirable because the site's orientation towards the sun makes the deck location difficult to use.

Site Context Aerial 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 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 proposed porch is 13 feet deep. Compliance with the setback requirement would reduce the porch size to about 10 feet deep, or would require the elimination of the covered porch roof. Compliance with the requirements of the ordinance would not prevent the owner from using the property, although the inability to cover the outdoor space from the sun with a fixed roof could be considered an unreasonable burden.
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.* The proposed porch is smaller than the existing deck footprint, and the variance is small. Given the site's location bordering a permanent open space preserve it is unlikely that the casual observer would ever know that the porch did not comply with the setback requirement.

3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant cites the trapezoidal shape of the property as a unique circumstance.
4. *The problem is not self-created.* The problem is not self-created if the presumption is that the applicant has a valid reason for the size of the porch which is necessitating the variance.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* If the variance is granted it is likely that substantial justice will be done. The proposed variance is not likely to have any material impact on any other property or property owner.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 13-013, that the request for a variance from Section 138-5.100.T (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow an attached covered porch with a 27.04 foot rear yard setback, Parcel Identification Number 15-04-302-025, zoned R-2 (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 Zoning Ordinance 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, those unique circumstances are/include the trapezoidal shape of the property and its location abutting a dedicated open space area.
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. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
7. 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. <Add any applicable conditions, if any>

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 13-013, that the request for a variance from Section 138-5.100.T (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow an attached covered porch with a 27.04 foot rear yard setback, Parcel Identification Number 15-04-302-025, zoned R-2 (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 of the Zoning Ordinance 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 would confer a special benefit on the applicant that is not enjoyed by neighboring property owners.
3. There are no unique circumstances of the property 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 and those wishing to build similar structures within the City.