



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

October 2, 2013

3768 Nearing Side Yard Setback Variance	
REQUEST	A side yard variance of 7.8 feet from Section 138-5.100 (Schedule of Regulations) to allow an attached garage with a side yard setback of 2.2 feet.
APPLICANT	Robert Zuehlk 3768 Nearing Road Rochester Hills, MI 48309
LOCATION	3768 Nearing Road
FILE NO.	13-014
PARCEL NO.	15-32-478-013
ZONING	R-4 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 garage with a side yard setback of 2.2 feet.

Section 138-5.100 requires a 10-foot side yard setback in the R-4 district, requiring a variance of 7.8 feet from the side yard setback requirement.

Summary

The subject parcel is located on the west side of Nearing Road, north of South Blvd. and west of Crooks Road.

The garage addition in question was illegally constructed without permits some time before November of 2011. It was brought to the City’s attention via a complaint registered by a resident on June 1, 2012. The City began the process of correcting the violation, including issuing two civil infraction tickets in January of 2013, both of which were paid by the property owner/applicant.

The property owner applied for building permits in January of 2013. The building department subsequently requested the applicant to submit a survey by March 1, 2013, and after an extension was granted by the Building Department the applicant submitted the survey on March 18, 2013. The survey indicated that the

addition was constructed 2.2 feet from the property line, and the Building Department denied the application on March 19, 2013 noting that the applicant could apply for a variance.

In May of 2013 the applicant indicated his intent to apply for a variance. The City did not receive the application for a variance until September 11, 2013.

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 property already has a two car attached garage. The lot meets the minimum requirements of the R-4 district and is typical of those found along Nearing Road.
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 subject site is similar to other lots along Nearing in size and layout. Approval of the variance would provide a benefit not enjoyed by other property owners along the street.
3. *The plight of the applicant is due to the unique circumstances of the property.* There are no readily apparent unique circumstances of the property.
4. *The problem is not self-created.* The applicant created the problem by illegally constructing without permits an addition that does not meet the minimum side yard setback requirement.
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 an accessory structure that does not meet the required side yard setback, and that was constructed without permits.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 13-014, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow an attached garage with a 2.2 foot side yard setback, Parcel Identification Number 15-32-478-013, zoned R-4 (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: *<insert applicable unique circumstances>*
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. Approval of a building permit and compliance with all applicable Building Code requirements.
2. *<Add any other applicable conditions>*

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 13-014, that the request for a variance from Section 138-5.100 (Schedule of Regulations) of the Rochester Hills Code of Ordinances to allow an attached garage with a 2.2 foot side yard setback, Parcel Identification Number 15-32-478-013, zoned R-4 (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 circumstances are self-created by the applicant. The property was conforming until the applicant illegally constructed the non-conforming addition.
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. 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.
6. The granting of this variance would be materially detrimental to the public welfare or existing or future neighboring uses.
7. 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.