



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

April 4, 2013

1468 Ruby Ave. Accessory Structure Area Variance

REQUEST	A variance of 917 square feet from Section 138-10.102(A) of the Code of Ordinances to permit detached accessory buildings with a total area of 1,637 square feet
APPLICANT	Daniel Kinnaird 1468 Ruby Ave. Rochester Hills, MI 48309
LOCATION	1468 Ruby Ave, south of Auburn between Crooks and Livernois
FILE NO.	13-003
PARCEL NO.	15-33-401-009
ZONING	R-4 One Family Residential
STAFF	Jim Breuckman, AICP, Manager of Planning

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Requested Variance

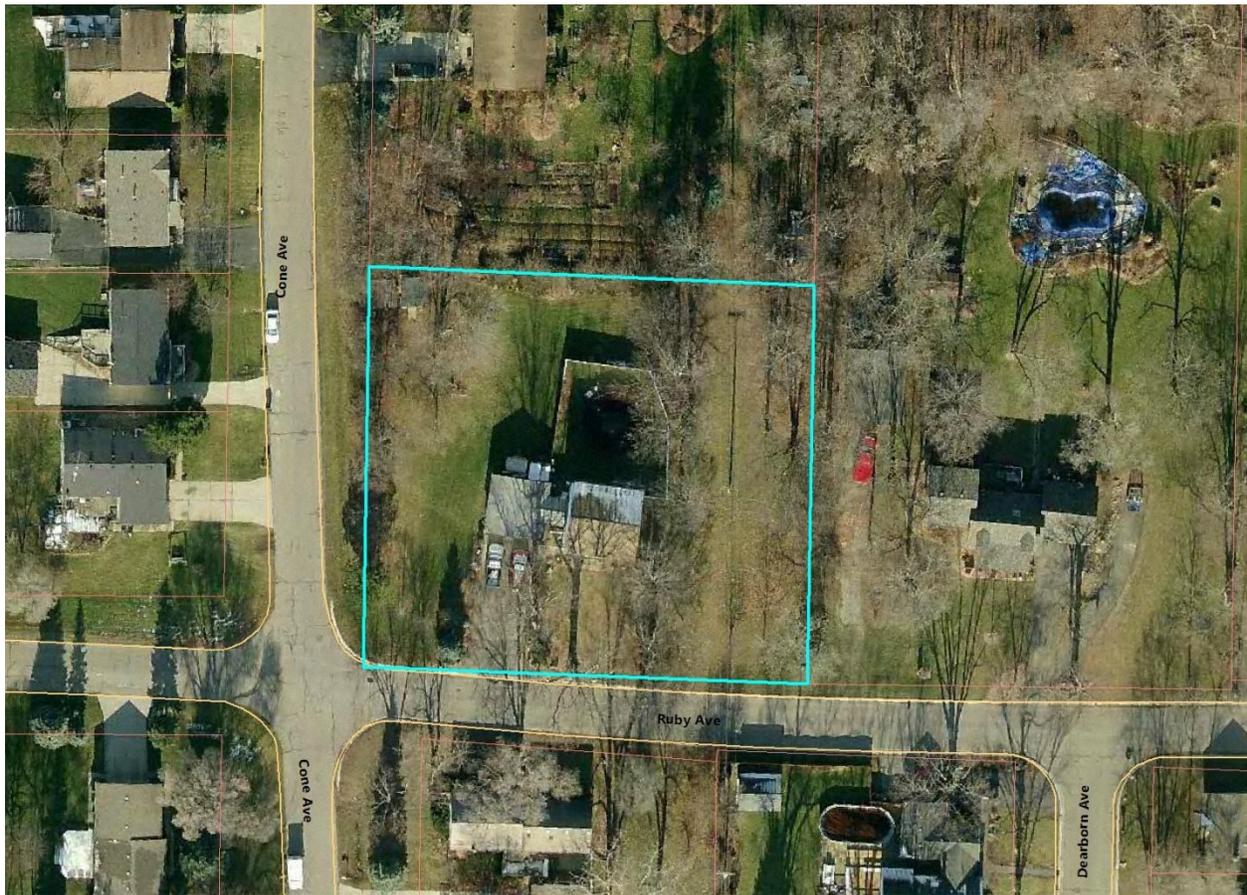
The applicant is requesting a 917 square foot variance from the Code of Ordinances to permit a detached accessory structure in the side yard.

The accessory structure in question is a carport with an area of 792 square feet. There are existing accessory structures on the lot with a total area of 845 square feet. Section 138-10.102(A) limits detached structures accessory to a residential building to 720 square feet or the area of the principal residence, whichever is less. In this case, the maximum is 720 square feet. The existing accessory structures and the new carport have a total area of 1,637 square feet, resulting in a violation of 917 square feet.

Summary

The subject parcel is located at the northeast corner of Ruby and Cone. The blocks to the west and south are characterized by smaller platted residential lots in the 7,500 - 12,000 sq. ft. range, while lots on the north side of Ruby east of Cone are unplatted acreage parcels. The subject parcel has an area of about 33,380 square feet. Therefore, the subject parcel is a transition point between platted and acreage residential character.

The carport, which exists today but had not yet been erected when the following photograph was taken, is located to the west of the garage, set back about 27 feet from the parcel's Cone Avenue boundary line.



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.* Compliance with the ordinance would require the structure in question to be removed. The applicant notes in his application that the carport was erected to store a truck that does not fit in the garage.
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.* It does not appear that other property owners along Cone or Ruby exceed the maximum area limit for detached accessory structures. A lesser variance would not give substantial relief to the applicant as he would still have to demolish part of the structure.
3. *The plight of the applicant is due to the unique circumstances of the property.* No unique circumstances of the property are known.

4. *The problem is not self-created.* The applicant erected the carport and so the problem can be considered self-created. The applicant contends that he did call the City and was informed that no permit was necessary because the carport does not require permanent attachment in the ground.
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 detached accessory structure with larger area. 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.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 13-003, that the request for a variance from Section 138-10.102.A (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 917 square feet, Parcel Identification Number 15-33-401-009, 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 restrictions governing the maximum area for detached accessory buildings 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, _____.
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 (insert any appropriate conditions).

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 13-003, that the request for a variance from Section 138-10.102.A (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 917 square feet, Parcel Identification Number 15-33-401-009, 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 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 detached accessory structures with more than double the permitted area. Thus, the variance 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 in the form of his desire to construct additional accessory structure 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.