



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

April 4, 2012

3488 Hazelton Accessory Structure Area Variance	
REQUEST	A variance from Section 138-10.102(A) of the Code of Ordinances to permit a detached accessory buildings with a total area of 889.9 square feet
APPLICANT	Daniel McNeil 3488 Hazelton Rochester Hills, MI 48307
LOCATION	South side of Hazelton, west of Rochester Road between South Boulevard and M59
FILE NO.	12-004
PARCEL NO.	15-34-176-014
ZONING	R-4 One Family Residential
STAFF	Jim Breuckman, AICP, Manager of Planning

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Requested Variance

The applicant is requesting a 169.9 square foot variance from the Code of Ordinances to permit a detached accessory structure in the rear yard with a total area of 889.9 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.

Site Description

The site is located on the south side of Hazelton between South Boulevard and M59. The lot is a typical of those found in the surrounding neighborhood. Many surrounding properties also contain detached accessory structures, and the applicant’s application indicates that detached accessory buildings on surrounding properties have more than 720 square feet of floor area.

Summary

The applicant constructed a 179.5 square foot addition to the existing garage without obtaining a building permit. The building code does not require permits for detached freestanding accessory structures smaller than 200 sq. ft. However, the new structure was attached to the existing garage making it part of the garage and causing the garage and the site to exceed the 720 sq. ft. limitation for detached accessory building area. Further, additions to existing structures do not qualify for the <200 sq. ft. exemption.

This issue was discovered via an anonymous complaint filed with the City.

An examination of the most recent available aerial photograph of the site and its neighboring properties indicates that the property at 3496 Hazelton has at least 1,224 square feet of accessory building area, and the property at 3480 Hazelton has at least 1,200 square feet of accessory building area. These numbers are approximate and based on measurements taken from the 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.* Compliance with the ordinance would require the structure in question to be removed. The applicant notes in his application that the house does not have a basement and has limited storage, and so as a practical matter larger garages may be justified in this neighborhood.

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.* Granting the variance will not create a unique situation along Hazelton and in the surrounding neighborhood as detached accessory structures larger than 720 square feet exist on other parcels. 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.* The only possible unique circumstances to the property, or perhaps more accurately the neighborhood, is the age of many of the houses and their lack of basements creating a functional lack of storage area within the principal building which in turn creates the need for additional storage area in accessory buildings.
4. *The problem is not self-created.* The applicant erected the garage addition and so the problem can be considered self-created.
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, however, many other parcels in the surrounding area have more than 720 square feet of floor 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, while balancing those considerations with the practical limitations provided by the age of the principal structure and the existence of larger accessory buildings on nearby parcels.

Sample Motions

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. 12-004, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 169.9 square feet, Parcel Identification Number 15-34-176-014, 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:

1. The addition to the garage structure shall be inspected for compliance with applicable building code regulations and any deficiencies shall be corrected.
2. Any other conditions deemed appropriate by the ZBA.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. 12-004, that the request for a variance from Section 138-10.102 (Detached Accessory Structures) of the Rochester Hills Code of Ordinances to grant a variance of 169.9 square feet, Parcel Identification Number 15-34-176-014, 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 a detached accessory structure in the front yard, and accessory structures on nearby properties comply with ordinance requirements. Thus, the variance would confer a special benefit on the applicant that is not enjoyed by the 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 building 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.