

NEW BUSINESS

2025-0247 Public Hearing - File No. PVAI2025-0004

Location: 2194 S. Livernois Rd., located on the west side of Livernois and south of Hamlin, Parcel 15-28-226-009, zoned R-3 One Family Residential

The applicant is requesting a variance from *Sec. 138-5.100 Schedule of Regulations*, which requires a minimum lot width of 90 feet in the R-3 One Family Residential zoning district. The proposed variance, if granted, would allow for the division of the existing parcel into two separate parcels, each with a width of 88.625 feet.

(Staff Report dated 6/4/25, Location Map, Applicant's Letter dated 4/29/25, Survey, Applicant's Aerial Photo, Application, City Reviews for Land Division, and Public Hearing Notice had been placed on file and by reference became a part of the record hereof.)

Present for the applicant was Mohamed Sultan, Sultan Homes, Inc.

Chairperson Koluch introduced this item and invited the applicant to the presenter's table. He noted that this is a request for a variance requiring a minimum lot width of 90 feet in the R-3 One Family Residential relative to 2194 S. Livernois Road. He asked Mr. Sultan if the owner was present.

Mr. Sultan responded that the owner was out of town and he was attending to represent him.

Mr. McLeod presented the staff report, noting that the variance, if granted, would allow for approximately a 1-1/2 foot variance on each proposed lot resulting in a width of approximately 88-1/2 feet. He pointed out that this parcel is surrounded by residential subdivision development or site condominium development that is all compliant with the R-3 District, as well as the properties to the north. He mentioned that properties across Livernois also had the MR Overlay. He noted that the minimum lot width in R-3 is 90 feet, and he stressed that the Board's action is solely in reference to lot width; and stated that the actual lot split would be considered as a separate administrative function. He stated that the existing home on the property would be removed. He pointed out that properties in each direction are single family homes, with the exception of directly to the south which is common space or open space for the Whispering Willows subdivision. He mentioned that the applicant does not have access to the street directly to the south as it would require them to get permission from Whispering Willows to go through the open space.

He mentioned the setbacks for R-3, and highlighted the fact that even though the applicant is requesting the variance in terms of lot width, they will have significantly over almost double what the minimum lot size or lot area is for the district involved. He stressed that the private open space blocks any potential access to Maple Leaf, and noted that if they actually had access to the south, the split would work in a north-south direction without any variances.

Mr. McLeod reviewed the ordinance standards, and noted that in this particular case, the Zoning Board will need to consider whether the variance will do substantial justice to the applicant as well as others in the district, and whether it will lead to additional similar variance requests particularly in the R-3 district; if the split itself is a self-creation for this variance or not, or if the lot itself and unique circumstances are creating the issue; and finally if the spirit of the ordinance is being observed and public safety and welfare is being secured.

He mentioned that the split is in its second review period.

Chairperson Koluch questioned what granting the variance could mean should the split not occur, and asked how the two processes could be separated.

Mr. McLeod responded that the action of the motion would be solely for the variance; and should the split not occur a condition could be placed on the action that the variance would become null and void. He added that there is a provision in the Ordinance that if the split does not occur within a year, or if the variance does not get triggered within a year, it becomes null and void.

Ms. Brnabic noted that the Building Department's review of the land division provided to the applicant stated that both proposed Parcels A and B are irregular shaped lots, and she asked for an explanation of the reference.

Mr. McLeod responded that he would not necessarily have called them irregularly-shaped, but this reference is based on the Ordinance and the fact that they do not meet the frontage requirements.

Ms. Brnabic asked about the previous record of lot width variances applied for and whether they were denied.

Mr. McLeod credited Jennifer MacDonald for researching this ahead of time, and stated that he was astonished to note that over the course of the last 30 years there were only a handful of lot width requests identified, perhaps four or five, made to the ZBA, and they mostly denied. One was a 6-1/2 foot variance in the R-4 district, another was a two-foot variance in the R-1 district. He noted that one was approved; however, it appeared to be for an existing lot that was deemed non-conforming and not for a land division, and they had to get a variance to build on it because it was a 36.46 foot variance. He commented that he is not sure that the ZBA would have granted that variance otherwise. He added that one other case was a 10-foot variance request that had no result, and one other was denied. He stressed that going back to the mid-nineties, other than the one for an existing lot, it was not found that the ZBA has not granted any.

Chairperson Koluch asked if any of the previous requests were for R-3.

Mr. McLeod responded that none of them were R-3, and the bulk of them seemed to be in the larger lot districts.

Ms. Brnabic mentioned that the lot width for R-1 was 100 feet.

Chairperson Koluch thanked Mr. Sultan for putting the request together and noted that Mr. Sultan included a summary that helped give a preview to the Board. He asked how long the owner has had the property, whether anyone was currently living on the property, and if the intent would be to demo the current home and build two new houses.

Mr. Sultan responded that he thought it was about two years, and he believed it was currently rented. He confirmed that it was correct that they plan to demo the current home.

Chairperson Koluch stated that he wanted to speak to the criteria that must be satisfied, and noted that practical difficulty was one consideration. He commented that Mr. Sultan asserts that strict enforcement will prevent the reasonable division into two lots, and enforcement will prevent the property from being used for its permitted purpose; however, he noted that this is usually the biggest hurdle to get over. He pointed out that as far as the Board knows, this type of variance has never been granted. He added that relative to the size of the variance requested, there really isn't an absolute maximum or minimum. He stressed that the Board has denied requests that were for inches and granted requests for hundreds of feet before, all depending upon the situation. He asked Mr. Sultan to expound on his comment that strict enforcement prevents a reasonable lot split despite the large lot area. He noted that the property is being used right now and is being rented, and commented that one of the things that must be demonstrated is that it is preventing the homeowner or applicant from being able to use the property for its permitted purpose, which is a residential property.

Mr. Sultan explained that the owner bought the property two years ago thinking that he would build a house; however, he spent more money on the lot and cannot afford to build one home on the lot. The owner had approached him and asked if he could built two homes on the lot, with one being a small house to sell. As the width was short by 1.23 feet on each lot, he started processing the application and told the owner that if the split was granted, he could use one lot for his own residential purpose, and build a home on the second to sell. He stated that for the price of the lot he paid, the owner will lose money to build one home.

Chairperson Koluch asked for confirmation that the reason that a north-south split cannot be accomplished is because of a lack of access to the south.

Mr. McLeod responded that was correct, noting that access is not available because the adjacent land is open space for the subdivision. He added that the lots would be much shallower and wider than normal lots if there was a north/south split and access to Maple Leaf.

Mr. Sultan stated that he has been building homes in the area since 2015, and this would be a good opportunity for him to build two homes at the same time. He mentioned that he has another dream to build a subdivision in Rochester Hills at some point.

Chairperson Koluch commented although he can understand this reasoning, it is not a part of the criteria.

Ms. Neubauer asked what due diligence was undertaken when the property was originally purchased relative to the desire to build two homes.

Mr. Sultan responded that the owner never intended to build two houses, and it came about after the large one was deemed cost prohibitive. He had then tried to sell the property and no one wanted to buy it. He stated that the price of the lot with construction cost for one home is not feasible; and this is why they are trying to split it.

Ms. Neubauer stated that she has a couple of problems with the request, and noted that the property is being used properly and with its intended purpose right now. She added that it is a self-created problem because it is used properly right now, and based on precedent cited for the previous denials, the Board does not want to establish a precedent by saying that it is a small amount. She commented that she understands Mr. Sultan's desire to build more homes in Rochester Hills; however, she cannot see how this meets the criteria to grant the variance. She stressed that access is an issue with the subdivision open area; and if the due diligence had been undertaken, the owner would have known that the property could not accommodate two houses.

Mr. Sultan stated that it is not a self-created problem as it is an existing lot that is just short 1.3 feet to be in compliance with R-3.

Ms. Neubauer stated that she understands the small amount and noted that it is frustrating; however, she cannot see this and is concerned about precedent.

Mr. Sultan stated that outside of the property there are a lot of houses that sit on 83 feet, and not every lot in the area has 90 feet.

Ms. Neubauer stated that the precedent would have been set if a variance had been granted previously; and based on the five or six cases that Mr. McLeod mentioned, they were denied, including one that was denied for nearly the same amount.

Chairperson Koluch stated that this is one of the reasons why the Board tries to put as much as it can on the record when deciding to approve or deny a variance. He commented that he does not know whether the criteria have changed much over time, and did not know if they had access to the Board's reasoning at the time as to why a request wasn't granted. He added that because these cases are so rare, perhaps the prospect of it coming up over and over again does not concern him as much. He commented that people want uniformity in lots and the split going west to east is outside of the characteristics of the neighborhood. He suggested that if they were able to get the approval of the subdivision to build that lot and split it top to bottom along Maple Leaf, the end result would look a lot different. He noted that Mr. McLeod had mentioned that this request was in its second review period.

Mr. McLeod responded that the Engineering Department had no issues from an

Engineering standpoint for the lot split; however, Building, Planning and Engineering must all sign off before Assessing will finalize the split. He stated that if the lot width does not meet the Ordinance, sign-off cannot occur. He noted that it would not matter if they would have Building and Engineering's recommendation, as until a variance is granted, it would be a denial.

Mr. Graves asked if the applicant has checked with the neighboring development to see if they could split and get access through the open space.

Mr. Sultan stated that while they thought about it, the entry to the subdivision is a boulevard, and it would be hard to exit through the boulevard if split that way.

Mr. Graves noted that while the Board is not there to solve the applicant's design problem, in theory one drive could go off of Livernois, and one could go off of Maple Leaf. He stressed that what he is getting at is that the applicant has not exhausted all of their resources to find out what options they have to do another type of split.

Mr. Sultan responded that the area next to the lot is not owned by the applicant and is owned by the subdivision. He noted that they talked about putting the water service line easement to the subdivision; however, they did not talk about buying the small area.

Ms. Neubauer noted that if this item is denied, the applicant cannot come back for a year; however, if it is postponed to request the applicant do more work, it could come back.

Mr. McLeod confirmed that was correct.

Ms. Neubauer made a motion to postpone the request so that the applicant has the ability to do some more research and exhaust the remedies to split it the other way. She asked if the applicant if this is what he wishes to happen.

Mr. Sultan responded that he would prefer a final decision be made today to grant the split.

Ms. Neubauer stressed that if they make a final decision today and the applicant is denied, he cannot come back for another year for this variance. She stated that it would have to be a determination that circumstances had changed; however, if it is postponed until the applicant asks the subdivision and checks on what is available on the easement, the applicant can then return. She commented that she did not want to postpone and then have the applicant do nothing. She asked what the applicant would like.

Mr. Sultan responded that he would like to postpone. He asked if the lot were split the other way if it would not require a variance.

Ms. Neubauer responded that this would be a question for Engineering, Building and Planning; however, she wanted the applicant to have the opportunity to do more homework. She reiterated the motion to postpone until the applicant comes back with the information to Planning.

Mr. McLeod suggested a timeframe be placed, whether it be six or 12 months.

Ms. Neubauer stated that she would give the applicant six months to do research.

Mr. Sultan questioned whether he could come back in a month if he finishes his research.

Ms. Neubauer responded that the applicant should work with Mr. McLeod and his department and could come back in a month if he figures out a solution.

Mr. Sultan asked if all he needs to do is check with the neighboring subdivision association.

Ms. Neubauer suggested that Mr. McLeod can give him more guidance.

Ms. Neubauer restated the motion to postpone the request, giving the applicant a maximum of six months to come back.

Ms. Brnabic seconded the motion.

Following calling for a roll call vote, Chairperson Koluch announced that the motion to postpone passed unanimously.

A motion was made by Neubauer, seconded by Brnabic, that this matter be Postponed. The motion carried by the following vote:

Aye 7 - Brnabic, Graves, Koluch, Tischer, Sakis, Neubauer and Young

Resolved, in the matter of File No. PVAI2025-0004, that the request for a variance from Section 138-5.100 Schedule of Regulations which requires the parcels to have a minimum lot width of 90 feet in the R-3 One Family Residential Zoning District, Parcel Identification Number 15-28-226- 009, be **POSTPONED** for a period of no longer than six months, to give the applicant the opportunity to conduct due diligence to discover if the lot can be split or another type of variance would be more appropriate for this property.