



Department of Planning and Economic Development

Staff Report to the Zoning Board of Appeals

April 4, 2024

PVAI2024-0003
484 Streamview Ct. – Administrative Appeal and Variance Request
Regarding an Attached Structure Located in the Rear Yard

REQUEST

The applicant is requesting an appeal of the Building department’s determination that Sec. 138-5.100 Schedule of Regulations, which requires a 35 ft. rear yard setback in the R-3 district, is applicable to this lot. The applicant asserts that Sec. 138-5.101(O). Rear Yards Adjacent to Parks or Open Space and by reference Sec. 138-5.201 is applicable, which would allow the proposed covered rear porch to be constructed with a 30 ft. rear yard setback.

In addition to the appeal, the applicant has also made a separate request for a 10 ft. variance from Sec. 138-5.100, the standard 35 ft. rear setback requirement within the R-3 District, which if granted would allow for the proposed covered rear porch to be constructed with a 25 ft. rear yard setback.

Table with 2 columns: Field Name (APPLICANT, LOCATION, FILE NO., PARCEL NO., ZONING, STAFF) and Value (Matthew Lerg, 484 Streamview Ct., Rochester Hills, MI 48309; 484 Streamview, located north of Walton Blvd. and west of Livernois Rd.; PVAI2024-0003; 15-09-403-003; R-3 One Family Residential; Chris McLeod, Planning Manager)

Requested Variance

The applicant has made two requests, the first being an appeal of the Building Department’s interpretation that the structure requires a rear yard setback of 35 feet as proposed, and second, if the appeal is not successful, a variance to allow the proposed covered rear porch to be constructed with a 25 foot rear yard setback.

The subject site is located on the northerly side of Streamview Ct., east of Rochdale Dr. Below is a table for the zoning and existing and future land use designations for the site and surrounding parcels.

	Zoning	Existing Land Use	Future Land Use
Subject Site	R-3 One Family Residential	Residential Home	Residential 3
North	R-3 One Family Residential	Single Family Homes	Residential 3
South (across Streamview Ct.)	R-3 One Family Residential	Single Family Homes	Residential 3
East	R-3 One Family Residential	Single Family Homes	Residential 3 / Private Recreation / Open Space
West (across Rochdale Dr.)	R-3 One Family Residential	Single Family Homes	Residential 3

Site Photograph



Application

As noted, the applicant has made two requests to the Zoning Board of Appeals. The first is an appeal or interpretation of the Building Department’s determination that the required rear yard setback within the R-3 One Family Residential District of thirty-five (35) feet is applicable to the subject lot and the second, a variance to allow for the attached, covered rear porch structure to be constructed with a twenty-five (25) foot rear yard setback. The porch cover will be a single story, slanted roof, supported by columns and will be open air.

As the applicant explains in their letter submitted as a part of the overall submittal, their request is for a reduction in the rear yard setback from thirty-five (35) feet to twenty-five (25) feet, a ten (10) foot variance. This variance, if granted, would allow a roofed structure to be constructed over the patio which is planned to replace the existing deck on the rear of the home.

The applicant also requests that if the ten (10) foot variance is not acceptable to the Zoning Board of Appeals that the Zoning Board of Appeals consider an appeal of the Building Department's interpretation that a rear yard setback of thirty-five (35) feet is required due to the lot's proximity to the designated open space of the overall development. The Zoning Ordinance, in Section 138-5.101, indicates that lots with rear yards that abut open space of at least one hundred (100) feet in depth/width may reduce their rear yards to thirty (30) feet. If the Zoning Board of Appeals does agree with the Applicant and grants the appeal to the Building Department's interpretation of the Zoning Ordinance and how it relates to this property, a five (5) foot variance would still be required to achieve the Applicant's overall request of constructing the structure twenty-five (25) feet from the rear property line.

The subject property is not a true rectangular shape as most lots are within the City. However, many lots within this Subdivision are irregularly shaped given the curvilinear roadways, cul-de-sacs and open spaces provided. The lot generally measures 105 feet along Rochdale, 88 feet along Streamview, 140 feet along the eastern property line and nearly 112 feet along the rear property line. The existing house is a two (2) story residence, which was constructed in 1981, and is approximately 2,870 square feet in area based on City Assessing records.

The home abuts a portion of the dedicated open space area for the Valley Stream Subdivision. The side property line, near the rear of the lot, abuts the open space for approximately twenty (20) feet. The proposed covered porch addition encroaches into the rear yard setback which directly faces the side yard of the abutting residential home rather than the dedicated open space area. The home on the northern adjacent lot appears to be constructed approximately twelve (12) feet from the side lot line (rear lot line of subject home).



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.B. provides criteria for determining if a practical difficulty exists. Please refer to the ZBA application for the applicant's full responses to the following criteria.

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.*
2. *A granting 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 applicant has indicated that substantial justice would be provided by allowing the property to be utilized in a manner that is consistent with the neighborhood and in a "reasonable" way, allowing*

for a more attractive property. It is noted that the current deck is approximately twenty-five (25) feet from the rear property line, the same distance as being proposed by the applicant for the covered addition.

3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant has indicated that the lot is uniquely shaped, a corner lot, and has angles that are not similar to other lots in the neighborhood. In addition, the applicant notes that the subject lot abuts both designated open space as well as the side yards of both abutting neighbors.
4. *The problem is not self-created.* The applicant has indicated that the lot lines were drawn decades ago when the neighborhood was originally developed and that the request represents their desire to update the original deck to a patio with a roof like other homes in the area.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant has indicated that other homes in the neighborhood have constructed similar structures with no negative impact on the public welfare and no negative impact on the homeowners in the area. Finally, the applicant has indicated that the structure will not encroach into any easements, utilities, emergency areas, etc. Upon a review of aerial photography (2023) it does not appear that any similar structures, with similar setbacks have been constructed on Streamview Ct. or on Rochdale. There do appear to be several instances on Valley Stream Ct. where structures have similar type setbacks abutting the open space.

Appeal of Interpretation/Decision

In addition to the requested dimensional variance, pursuant to *Section 138-2.400*, the applicant is also asking for an appeal to the Building Department's interpretation/decision that the rear yard setback for the subject is required to be thirty-five (35) feet rather than thirty (30) feet.

The following regulation within the Zoning Ordinance is the subject of the applicant's appeal:

- O. **Rear Yards Adjacent to Parks or Open Space.** The minimum rear yard setback requirement may be reduced to 30 feet on lots that border on land permanently dedicated for park, recreation, and/or open space purposes, provided that the dimension of the park, recreation, and/or open space land shall not be less than 100 feet measured in a straight line not more than 20 degrees off of perpendicular to the rear lot line of such lot.

For purposes of this footnote, permanently dedicated open space shall be determined as provided in [Section 138-5.201](#) for open space option subdivisions. As to other residentially zoned property, dedicated open space shall be land dedicated for park, recreation and/or open space within an approved planned unit development (PUD) by way of recorded plan, easement, agreement or other satisfactory evidence, that the open space use is intended to be permanent.

It is staff's opinion given the orientation of the lot and the portion of the lot (which is actually a side lot line) that abuts the dedicated open space that the above noted provision is not applicable. It appears that the intent of the Ordinance is to provide relief to the rear yard setback when the rear yard/property line abuts dedicated open space and not an abutting residential property with a home. With this relationship, impacts to abutting residential structures would not exist if the setbacks were reduced due to the presence of the open space. In the subject matter, the dedicated open space abuts a side yard and if the rear yard setback was reduced as a result of the abutting open space, the residential

structure on the subject property would be allowed to be constructed closer to the residential home on the abutting lot, contrary to what the intent of the ordinance appears to be.

It should be noted that if the Zoning Board of Appeals does not concur with City Staff in the interpretation and agrees that the reduced setback of thirty (30) feet is applicable in this case due to the presence of dedicated open space, the permissible reduction in setback (5 feet) is equivalent to one half of the applicant's dimensional variance request. Therefore, if the appeal is granted, but the variance is denied, the covered porch structure may still be constructed five (5) feet closer to (or thirty (30) feet from) the property line

Sample Motions - Interpretation

Motion to Affirm Zoning Ordinance Interpretation/Decision

MOTION by _____, seconded by _____, in the matter of File No. PVAI2024-0003, that the Zoning Board of Appeals **concurs** with City Staff in the interpretation/decision of the required rear yard setback and that the limited area of twenty (20) feet that the subject property abuts open space, along a side lot line, does not meet the intent of the ordinance in regards to reducing the rear yard setback.

Motion to Reverse Zoning Ordinance Interpretation/Decision

MOTION by _____, seconded by _____, in the matter of File No. PVAI2024-0003, that the Zoning Board of Appeals **does not concur** with City Staff in the interpretation/decision of the required rear yard, instead it is the Zoning Board of Appeals interpretation that the required rear yard setback is 30 feet due to the alignment of the side/rear property lines adjacent to the community's open space.

Regardless of the decision above, the Zoning Board of Appeals must also make a determination regarding the variance request.

Sample Motions – Variance Request

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. PVAI2024-0003, that the request for a variance from Section 138-5.100 *Schedule of Regulations* which requires a thirty five (35) foot rear yard setback in the R-3 One Family Residential zoning district, Parcel Identification Number 15-09-403-003, be **APPROVED** to allow for the covered rear porch structure to be constructed with a 25 ft. rear setback, because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with respect to the setbacks for which this variance is granted.

1. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property and will be unnecessarily burdensome.

2. Granting the variance will preserve a substantial property right for the applicant and thus substantial justice shall be done.
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 as described in the above criterion, specifically the issues relative to the fact that the subject property does abut open space to the side/east, the proposed structure is an open air structure and therefore the massing is not as intensive as a full, habitable structure, and the setback of the structure at its closest point is twenty five (25) feet and most of the structure will be over twenty five (25) feet from the rear property line. These factors distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations.
5. The granting of these variances would not be materially detrimental to the public welfare or existing or future neighboring uses.
6. Approval of the requested variances 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.
7. That all necessary building permits and inspections be applied for by the applicant.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. PVAI2024-0003, that the request for a variance of 10 ft. from Section 138-10.100 Schedule of Regulations which requires a rear yard setback of thirty-five (35) feet in the R-3 One Family Residential zoning district, Parcel Identification Number 15-09-403-003, 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 having an outdoor deck, including a portion of such deck at the rear of the residence on the subject property in a manner that complies with the requirements of the Zoning Ordinance and therefore no practical difficulty has been demonstrated for this property.
2. Granting the variance will not do substantial justice to nearby property owners as it would confer special benefits to the applicant that are not enjoyed by other property owners in the vicinity.
3. There are no unique circumstances of the property that have been identified by the applicant that necessitate granting the variance.
4. The subject property is not situated adjacent to open space in a manner that would help minimize impacts to an abutting neighbor, rather the granting of a variance in this case would allow a residential structure to be constructed much closer to an abutting residence than intended by Ordinance.
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 requirements of the Zoning Ordinance from applicants.