

VARIANCE 2025- 01

STAFF REPORT

To: The Northport Village Council-Acting as the Zoning Board of Appeals
From: James Dyer-Village Manager and Zoning Administrator
Re: Variance Lot 79 Hutchinson's Addition to the Village of Northport

SUMMARY OF VARIANCE REQUESTED

Samuel Scott, as the contractor and agent of the owner, seeks a variance from the strict application of Section 8.2 (2), which requires a 20-foot front yard setback, in the R-2 zone in the Village of Northport.

The property is currently vacant. When originally platted, in 1897, Hutchinson's addition to the Village of Northport included a 66-foot right-of-way for West Drive. The right-of-way ran due north and south and terminated in a dead end, approximately 900 feet south of the southeast corner of lot 79. Also, on the plat Smith Street continues westbound and intersects with West Street. Obviously, this connection was never made, and Smith Street was not built farther west than the existing Northport school property.

However, sometime since adoption of the plat a decision was made to connect West Street with southbound M-22. This necessitated moving the route of West Street to the east of the platted West Street right-of-way. As built, West Drive begins to move to the East, slightly north of lot 79, until it completely leaves the platted right-of-way and crosses property currently owned by the Northport schools, until it makes an angled connection with M-22. As a result, the existing lot line for lot 79 is approximately 41 feet from the traveled portion of West Street, 21 feet farther west than it would have been had the lot line been extended at the time West Street was built.

In addition to the unusual distance separating the platted lot line from the travelled portion of West Street, the lot is heavily wooded, with a number of old-growth hemlock trees on the back portion of the property, which would need to be cut down if a 20-foot setback from the existing property line was required.

The applicant has paid the \$300 fee, letters were mailed to property owners at the addresses attached to the variance application, which are located within 300 feet of the property, the notice has been posted in the Village office and publication in the Leelanau enterprise has occurred. All the prerequisites of the zoning application have been completed.

RECOMMENDATION

I recommend approval of the variance, as requested. It complies with the general and specific conditions of Article 20, section 20.09 Zoning Ordinance, as indicated below. Requiring a 20-foot setback, in this instance, would not advance the purposes of the Northport zoning ordinance, would permit a more consistent streetscape on the west side of West Street, and would permit preservation of old-growth trees on site.

REVIEW OF VARIANCE CRITERIA

Variances are addressed by section 20.09 of the current Zoning Ordinance. This section authorizes the Northport Village Council, acting as the Zoning Board of Appeals, to grant a variance from the specific dimensional requirements imposed by the ordinance. The variance request satisfies all basic conditions of the ordinance and meets two of the three special conditions otherwise required.

Basic conditions are as follows. A variance request must meet all five of these conditions:

- a. **Will not be contrary to the public interest or the intent and purpose of this Ordinance.** - The variance application satisfies this condition. Dimensional requirements, particularly a front yard setback, promote uniformity of appearance in the streetscape. In this case requiring a 20-foot setback would place the proposed residence almost twice the distance from the traveled portion of West Drive when compared to existing structures to the north. Strictly enforcing the zoning ordinance would actually create nonuniformity, contrary to the ordinance intent. Because of the unusual configuration of West Street, and its deviation from the 1887 plat of Hutchinson's addition in my view granting the variance does satisfy the intent and purpose of the zoning ordinance.
- b. **Shall not permit the establishment within a District of any use which is not permitted by right within the zoning district or any use or dimensional variance for which conditional use permit is required.** The variance also satisfies this condition. Granting the variance would not create a change of use or permitted use that is not otherwise permitted in the zoning district. Since the applicant does not seek a use variance the first portion of this criteria is established. Additionally, the R-2 zoning district has no conditional dimensions within this zoning classification, so the second portion of this criteria is irrelevant. Granting the variance does not confer a special right on this parcel, not otherwise available if the criteria for a variance can be satisfied.
- c. **Will the not cause a substantial adverse effect upon the property values in the immediate vicinity or in the district in which the property the applicant is located.** Consideration of this criterion necessarily involves a subjective determination and is difficult to evaluate precisely. In any event, the variance does not provide for a setback change on a property border located next to the lot line of a neighboring parcel. Only the border facing the street is impacted by this zoning request. In short granting the zoning request will not permit the applicant to build closer to an owner's property line, which is perhaps the only obvious time when a setback variance would impact property values in the immediate vicinity. Given this, it is my opinion that the variance satisfies this criterion.
- d. **It is not one where the specific conditions relating to the property are so general or recurrent in nature is to make the formulation of a general regulation for such conditions reasonably practical.** This section dictates that a variance should not be granted when it would be more appropriate to formulate a new general rule that could apply district wide. In this case, granting a variance would be preferable to a general rule permitting zero front yard setbacks in the R-2 zone. Requiring a setback in this zone does allow for open, green space on the streetscape. In this case green space will still be present, but it is present because of the relocation of West Street, rather than the imposition of the setback requirement. While there are other lots in the Village, including all of the lots south of the subject parcel, granting the variance is still preferable than creating a general regulation since the distances in the circumstances of each lot will be different. For this reason, it is my opinion that the variance satisfies this criterion.
- e. **Will relate only to property that is under control of the applicant.** This criterion is closely related to paragraph (d) above. Although there are other properties south of the subject parcel where West Street deviates from its platted right-of-way, all of the conditions present on this site may not be present on those sites, in particular the need to preserve old growth trees. Regardless, it is important to remember that the deviation of West Drive from the platted right-of-way was initiated by the village, rather than the property owner and applicant. Also, the two parcels immediately to the south of the subject parcel are also owned by the current applicant. Therefore, while it is possible that the argument favoring granting a variance in this case could be applied to other parcels, as well as parcels under the control of others, it is not so prevalent as to merit denial of the variance for this reason alone. Indeed, public permitting the variance may in any case be preferable to relocating the lot lines, or conveying additional property, which would otherwise appear to be the front yard of the parcels fronting West Street. For this reason, the variance meets this criterion.

Since this variance meets all five basic conditions required by section 20.09, the ZBA must also find that the variance meets at least one of the special conditions set forth in section 20.09 (2) (a-c). In my opinion, this variance meets subparagraphs b, as indicated below:

b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or condition shall not have resulted from applying this ordinance.

As indicated above there are already established circumstances relevant to the front yard setback that are exceptional or extraordinary, when considering the appropriateness of applying any appropriate particular setback to the subject parcel. As noted above, the proposed variance would create a consistent front yard setback when compared to the property immediately to the north. The need for this variance is occasioned by the relocation of West Street, when compared to its location as originally planned platted in 1897. The setback in the R-2 district was established based upon the small lot sizes permitted in this district, and consistency in the distance of the property line to the travel portion of the roadway. In this case there is no consistency as noted above requiring the strict application of the 20-foot setback would serve no municipal land-use purpose, potentially create an inconsistent streetscape, and require loss of old-growth hemlock trees, all of which would be inconsistent with the purposes of the zoning ordinance. Granting the variance would not be inconsistent with the health, safety and welfare of the Village of Northport.

For these reasons, in my opinion, granting the variance is consistent with the objectives of the ordinance, as it relates to maintaining front yard setbacks. I recommend that the Village Council, acting as the Northport Zoning Board of Appeals, grant the variance as requested.