

**PRAIRIEVILLE TOWNSHIP
ZONING BOARD OF APPEALS**

April 7, 2021

PRESENT: Chairperson Grimes, Jaci Dalke, Dan Jeska, Dave Mitchell, Richard VanNiman

ABSENT: None

ALSO PRESENT: Rebecca Harvey, Township Planning Consultant

CALL TO ORDER

Chairperson Grimes called the meeting to order at 7:00 p.m.

Richard VanNiman was welcomed as the new Planning Commission liaison to the Zoning Board of Appeals. It was further noted that Dave Mitchell has been appointed as a regular member of the Board and will no longer serve as the Alternate. Welcome back Dave.

APPROVAL OF AGENDA

The agenda was approved as presented.

APPROVAL OF MINUTES

The next matter to come before the Board was consideration of the proposed minutes of March 3, 2021. Mr. Mitchell moved to approve the minutes as presented. Mr. Jeska seconded the motion. The motion carried unanimously.

PUBLIC COMMENT CONCERNING NON-PUBLIC HEARING ITEMS

No public comment was offered on non-public hearing items.

PUBLIC HEARING ITEMS

VARIANCE REQUEST - Kokur

The next matter to come before the Board was the request by Jeff DeKoning of Eaglecrest Homes, representing Chris and Shelley Kokur, for

variance approval from the 25 ft side yard (streetside) setback requirement for nonconforming waterfront lots set forth in Section 6.17 E – *Nonconforming Lots of Record*. The subject property is located at 11710 Lindsey Road and is within the R-2 District.

Chairperson Grimes stated that the request had been considered at the March 3 meeting and postponed to the April 7 meeting to ‘allow time for staff to confirm the status of the property as a lawful building site’.

Jeff DeKoning of Eaglecrest Homes, project contractor, was present on behalf of the application. Mr. DeKoning stated that, as suggested by the Board, he has explored other options, including a 2-story house instead of the proposed 1-story house; relocation of the gas line; and reconsideration of how to work with the grade limitations. He was able to determine that a single-story house is needed by the owner due to lifestyle parameters; estimated costs to relocate the gas line are over \$10,000; and, there is inadequate room for movement in working with the grade limitations to achieve compliance with all setback requirements.

Mr. DeKoning stated that essentially there is no change in the proposal from the March meeting, reiterating that all that is requested is relief from the 25 ft setback requirement applicable to the ‘unnamed court’ right-of-way so as to allow a 10 ft setback from same. He emphasized that the proposed 10 ft setback would exist only along a portion of the ‘unnamed court’ right-of-way, and that the setback would increase from 10 ft to 25 ft east of the gas line (along Breezy Point Drive).

Chairperson Grimes inquired as to the lawful nonconforming status of the property. He reminded that a variance request involving division of the subject property was considered and denied in April, 2011 and yet the current parcel is now provided 66 ft of water frontage, insufficient to comply with R-2 District standard of 100 ft. He inquired as to the results of staff’s review of the status of the property.

Ms. Harvey provided the following overview and explanation of the land division status of the property:

- Land divisions receive review/approval from the County for compliance with the Land Division Act; and, review/approval from PCI for compliance with the Zoning Ordinance. Once approved, the deed is recorded and the Township assigns new parcel numbers.
- This process does not apply to a 'land division' that essentially involves only the movement of a common property boundary. Specifically, the Land Division Act states 'Division does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel

is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this Act or the requirements of an applicable local ordinance.'

- This provision of the Act has the effect of removing a 'property line transfer' from the structured approval process that applies to land divisions. Simply put, the adjustment of a common property line; the combination of properties; the decrease of parcel size - road frontage - water frontage, etc., can all occur without submitting a land division application and getting the 'adjustment' reviewed for compliance with local zoning.
- Although the Act does not relieve the adjusted or new parcels from complying with the Zoning Ordinance, it does remove them from the review/approval process. As a result, it is possible to create new parcels that do not comply with the Zoning Ordinance and which are then 'unbuildable'.
- In practice, a property owner is able to record a deed that effectuates property line adjustments (creates new parcels) with no check on zoning compliance; then, that recorded deed is received by the Township (who assumes the new parcels were found to comply w/ the Zoning Ordinance as with a 'land division') . . . and a new parcel number is issued. Once the new parcel number is issued, the parcel is considered to be 'lawfully established'. The issuance of the new parcel number essentially represents Township approval of the new parcel.
- Regarding the Kokur property, several property line transfers were lawfully accomplished outside of the zoning review/approval process; the deeds for the resulting parcels were lawfully recorded; and, the Township received the deeds and issued new parcel numbers (per the typical process). The resulting parcel that is now the Kokur parcel did not comply with the water frontage requirement established in the Zoning Ordinance, so per the Act, the parcel is not 'buildable'. However, the parcel was 'lawfully established' (ie. received Township approval). As a result, variance approval from the zoning standard is now required to render the parcel 'buildable'.

Chairperson Grimes inquired of the applicant why the proposed house could not be moved east of the gas line where grade limitations are not present and setback standards can be met?

Mr. DeKoning explained that an accessory building is proposed to be located in the area east of the gas line. He added that it is not a desirable location for the house because it does not offer a view of the lake.

Chairperson Grimes and Mr. Mitchell disagreed, noting that recent site visits revealed that there is no location on the property that does not afford a lake view.

Mr. DeKoning clarified that he meant the owners desire to locate the house where they can view/connect with users of the beachfront.

Chairperson Grimes summarized three options that appear to be available to the applicant, in lieu of variance approval:

1. Construct a smaller house;
2. Construct the house east of the gas line where there is adequate space; or
3. Relocate the gas line.

Mr. DeKoning stated that the owners very much desire to have a walk-out home where the lower level is open to the beachfront, making the reduction of the size of the house the better option of the three noted. He questioned why the encroachment on the 'unnamed court' right-of-way was of import, especially in that the proposed 10 ft setback is similar to many properties in the area.

Mr. Mitchell inquired as to the use of the term 'single-story' in the proposal when in fact a walk-out is proposed, which appears to be driving the variance request. Shelley Kokur explained that the house design is being driven by the need to include an 'in-law suite' in the floor plan.

Mr. VanNiman stated that the positioning of the flags on the site causes him to question if the required 5 ft separation from the gas line was being maintained. Mr. DeKoning confirmed compliance, noting that great care has been taken to fit the proposed house on the site given its abnormalities.

No further public comment was offered on the matter and the public comment portion of the hearing was closed.

The Board proceeded with a review of the variance criteria set forth in Section 7.5 with respect to the requested side yard (streetside) setback variance. The following findings were noted:

#1 – The proposed residential use of the property is permitted within the R-2 District.

#2 – It was noted that an 'adequate-' or 'reasonably-' sized building envelope in compliance with applicable setback requirements was available on the subject property for construction. It was further noted that several options for compliance were available, including reducing the size of the proposed house; constructing the house east of the gas line; or relocating the gas line.

#3 – In determining substantial justice, a review of building arrangements on surrounding property was completed. It was recognized that the proposed 10 ft setback from the undeveloped platted right-of-way identified as 'Court' would not be dissimilar to the 10 ft side yard setback standard applicable to neighboring properties, but it was reasoned that the existing building located on the lot on the other side of the platted right-of-way is provided the required 25 ft + setback . . . and that there is adequate area on the subject property to provide a similar (required) setback.

#4 – In consideration of unique physical circumstances, it was recognized that the size, configuration and elevation change attributed to the lot are similar to many properties in the general area and are not 'unique' to the site.

#5 – The proposal is at the discretion of the applicant and represents a self-created hardship.

#6 – The intent of the side yard (streetside) setback requirement was referenced and the following was noted:

: The side yard (streetside) setback requirement is intended to afford adequate area for off-street parking, provide building/roadway separation for safety, and establish consistency of building lines.

: The proposed 10 ft setback will not result in a reduced off-street parking area; minimize building/roadway separation; or affect building alignment.

: However, the proposed new construction meets waterfront separation requirements, and compliance with the streetside setback requirement is possible without reducing that waterfront separation, which is also consistent with the intent of the Ordinance.

It was noted that the above findings were based on the application documents presented and the representations made by the applicant at the meeting.

Chairperson Grimes then moved to deny variance approval from the 25 ft side yard (streetside) setback requirement so as to permit the proposed 10 ft setback along a portion of the 'unnamed court' right-of-way present on the north side of the property. Denial is based upon the findings of the Board on the variance criteria set forth in Section 7.5, Zoning Ordinance, specifically noting the size of the property; the available options for compliance; and the lack of unique physical circumstances on the site. Ms. Dalke seconded the motion. The motion carried unanimously.

UNFINISHED BUSINESS

Chairperson Grimes stated that no 'Unfinished Business' was scheduled for Board consideration.

NEW BUSINESS

Ms. Harvey advised that the Kokur property will be on the June meeting agenda for consideration of the request for variance approval from the water frontage requirement.

No further communications were offered.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 8:00 pm.