

**PRAIRIEVILLE TOWNSHIP  
ZONING BOARD OF APPEALS**

**May 4, 2022**

**PRESENT:** Jaci Dalke, Alternate Ted DeVries, Dan Jeska, Dave Mitchell

**ABSENT:** Chairperson Dale Grimes, Richard VanNiman

**ALSO PRESENT:** Rebecca Harvey, Township Planning Consultant

CALL TO ORDER

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

APPROVAL OF AGENDA

Mr. Mitchell moved to approve the agenda as presented. Ms. Dalke seconded the motion. The motion carried unanimously.

APPROVAL OF MINUTES

The next matter to come before the Board was consideration of the proposed minutes of April 6, 2022. Mr. Mitchell moved to approve the minutes as presented. Mr. DeVries seconded the motion. The motion carried unanimously.

PUBLIC COMMENT CONCERNING NON-PUBLIC HEARING ITEMS

James Parker stated that he was not able to find ZBA minutes available on the Township website.

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

PUBLIC HEARING ITEMS

*VARIANCE REQUEST - Holtz*

The next matter to come before the Board was the request of Melissa and Shawn Holtz for variance approval to allow for the construction of a roof over an existing deck that fails to meet the waterfront setback requirement established by

Section 4.24 – *Waterfront Lots*, Zoning Ordinance. The subject property is located at 11058 Horton Court and is within the R-2 District.

Acting Chairperson Jeska opened the public hearing.

Brad Bender, project contractor, was present on behalf of the application. He provided an overview of the request, noting the following:

- The existing deck is 835 sq ft in size with a 13 ft depth.
- The existing deck is provided a waterfront setback of 25 ft.
- The construction of a roof over the existing deck is proposed . . . to be provided the same setbacks as the deck.
- Variance approval from the 35 ft waterfront setback requirement is requested to allow for the proposed 25 ft setback from all waterfront sides of the site.

In response to Board questions, Mr. Bender confirmed that the deck height is slightly less than 18 inches from grade and that the proposed construction is a roof only . . . no walls are proposed.

Acting Chairperson Jeska noted that one letter of support had been received.

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

Ms. Harvey noted that the application material (and staff report) reflects a deck setback of 35 ft. A correction per the presentation of the applicant's representative should be noted.

The Board then proceeded with a review of the variance criteria set forth in Section 7.5. Specifically, the following findings with respect to the requested variance were noted:

#1 – The requested setback variance will not serve to 'permit the establishment of a use' which is not allowed within the R-2 District.

#2 – It was recognized that a denial of the variance would not prevent reasonable use of the property. It was noted, however, that options for establishing a roof over the existing deck in compliance with the setback requirements are limited due to the existing location of the deck.

#3 – In determining substantial justice, a review of the building arrangements on surrounding property was completed. It was noted that waterfront setbacks ranging from 25-45 ft are present on surrounding properties. It was further noted that the subject site is a peninsula and so is not immediately adjacent to or impacted by area waterfront setbacks.

#4 – It was recognized that the existing location of the deck is the only circumstance of the property dictating the location of the deck roof and does not constitute a unique physical limitation on the site preventing compliance.

#5 – The proposed construction is at the discretion of the property owner and represents a self-created hardship.

#6 – The intent of the waterfront setback requirement was referenced and the following noted:

: The front yard setback requirement for waterfront lots was established to address issues of waterfront/building separation, visibility/sight lines, consistency of building lines, and shoreline preservation.

: The proposed 25 ft waterfront setback exceeds the minimum required setback of 35 ft, suggesting waterfront/building separation and shoreline preservation objectives will not be met.

: The situation of the subject site as a peninsula . . . and the situation of the existing dwelling in relation to development on adjacent properties . . . suggests visibility/sight lines and general building alignment will not be impacted by the reduced setback.

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

Mr. Mitchell then moved to grant variance approval from the 35 ft waterfront setback requirement so as to allow a 25 ft waterfront setback for the proposed deck roof, based upon the findings of the Board on Variance Criteria #1, #3 and #6 set forth in Section 7.5, Zoning Ordinance. Mr. DeVries seconded the motion. The motion carried unanimously.

#### *VARIANCE REQUEST - Shook*

The next matter to come before the Board was the request of Marvin Shook for variance approval for the division of an existing combined lot into three separate lots which fail to meet the dimensional requirements set forth in Section

4.41 – *Schedule of Lot, Yard, and Area Requirements*. The subject property is located at 11417 Lakeshore Drive and is within the R-2 District.

Acting Chairperson Jeska opened the public hearing.

Marvin Shook was present on behalf of the application. He provided an overview of the request, noting the following:

- The subject property exists as a single 0.84-acre site consisting of Lots 52, 65, 66, and 67 of Merlau's Pine Lake Plat, bisected by Lakeshore Drive.
- The subject property is provided approximately 180 ft frontage on the south side of Lakeshore Drive/220 ft frontage on the north side of Lakeshore Drive and approximately 137 ft of frontage on Pine Lake. The subject property exists as a lawful conforming site.
- The subject property is currently occupied by a one-story, 616 sq ft cabin/480 sq ft detached garage (Lot 65) and a 768 sq ft (24 ft x 32 ft) detached accessory building (Lot 52).
- Division of the property to create the following 3 sites is proposed:
  - Site 1 - Lot 52: 0.27 acres (11,760 sq ft); 220 ft lot width/road frontage (detached accessory building)
  - Site 2 - Lot 65: 0.18 acres (7950 sq ft); 50 ft lot width/road frontage; 50 ft water frontage (cabin/detached garage)
  - Site 3 - Lots 66/67: 0.39 acres (16,990 sq ft); 115 ft lot width/road frontage; 87 ft water frontage (vacant)
- Variance approval from the 12,000 sq ft minimum lot area requirement is requested to allow for the establishment of Site 1 (Lot 52) with 11,760 sq ft and Site 2 (Lot 65) with 7950 sq ft.
- Variance approval from the 100 ft width/frontage requirement is requested to allow for the establishment of Site 2 (Lot 65) with 50 ft of road/water frontage and Site 3 (Lots 66/67) with 87.5 ft of water frontage.

Mr. Shook provided a general purchase history of the property and how the subject lots became combined into a single parcel. He further explained that a drain currently extends across Lot 67 from the private road to the lake.

Jeff Harper, neighboring property owner, stated that the applicant has been a good steward of the land and that he supports the land division proposal.

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

The Board then proceeded with a review of the variance criteria set forth in Section 7.5. Specifically, the following findings with respect to the requested variance were noted:

#1 – The requested lot area and lot width/frontage variances will not serve to ‘permit the establishment of a use’ which is not allowed within the R-2 District.

#2 – It was recognized that a denial of the variances would prevent the proposed land division, but will not render the property ‘unbuildable’ or prevent reasonable use. It was further noted that the subject property is provided adequate land area and road frontage to allow for a modified division in compliance with minimum requirements.

#3 – In determining substantial justice, it was recognized that many surrounding properties exist as ‘old lake lots’ and are substandard in size and width/frontage. However, dimensional requirements for the R-2 District suggest that the creation of new substandard lots is not supported. It was further noted that the approval of substandard size lots may also lead to future setback variance requests due to ‘unbuildable’ conditions.

#4 – The existing lot size/configuration is the only circumstance of the property preventing compliance and does not constitute an ‘*exceptional physical circumstance of the property*’.

#5 – The proposed land division represents an ‘affirmative action of the property owner’ . . . or a self-created hardship.

#6 – The intent of the lot area requirement was referenced and the following noted:

: Minimum lot area requirements are established to: 1) regulate density through limiting the creation of building sites; 2) generally affect building spacing and lot coverage; and 3) ensure adequate land area for utilities and stormwater retention.

: The proposed land division will result in three building sites that total 36,590 sq ft, consistent with the density objective (intent) of a 12,000 sq ft minimum lot size standard.

: Lot 65 will have significantly less lot area (7950 sq ft) than required (12,000 sq ft), suggesting building spacing, lot coverage, and health/safety objectives will not be met.

The intent of the lot width/road frontage requirement was referenced and the following noted:

: Minimum lot width/frontage requirements are established to: 1) regulate density through limiting the creation of building sites; 2) generally affect building spacing; 3) limit the quantity and spacing of driveways; and 4) provide for life-safety access by emergency vehicles.

: The proposed land division will create three building sites with a total road frontage of 400 ft, consistent with the density and access objectives of a 100 ft minimum road frontage standard.

: Lot 65 will have significantly less lot width/frontage (50 ft) than required (100 ft), suggesting building separation, life-safety, and access objectives will not be met.

: The proposed land division will create 2 building sites with a total water frontage of 137 ft, inconsistent with the density objective (intent) of the 100 ft minimum water frontage standard.

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

Mr. Shook inquired if a revised land division proposal that creates only two sites: Site 1 – Lots 52/66/67 and Site 2 – Lot 65, would be more supportable. Harvey confirmed that the revised proposal would eliminate the need for the lot size variance for Lot 52 . . . but that all other variances would still be needed.

Ms. Dalke expressed concern with the premise of taking an existing conforming arrangement and creating lots that would not conform. Lengthy Board discussion ensued regarding land division options available consistent with adopted dimensional requirements.

Following a review of the options available, Ms. Dalke moved to grant variance approval from the 12,000 sq ft lot area requirement so as to allow for the proposed division of Site 1 (Lot 52) based upon the findings of the Board on Variance Criteria #1 and #6 set forth in Section 7.5, Zoning Ordinance, and specifically noting the following:

1. Lot 52 meets lot width/frontage requirements and is only shy of the 12,000 sq ft lot size standard by 240 sq ft.

2. Lot 52 is already separated from Lots 65/66/67 by a private road.
3. Lot 52 is not a waterfront lot.
4. Establishing Lot 52 as a separate lot does not affect the ability of Lots 65/66/67 as a single site to comply with lot size and width/frontage requirements.

Mr. Mitchell seconded the motion. The motion carried unanimously.

Ms. Dalke then moved to deny variance approval from the 12,000 sq ft lot area requirement and the 100 ft lot width/frontage requirement such to facilitate the division of Lots 65/66/67 based upon the findings of the Board on Variance Criteria #2 through #6 set forth in Section 7.5, Zoning Ordinance. Mr. Mitchell seconded the motion. The motion carried unanimously.

#### *VARIANCE REQUEST - Hart*

The next matter to come before the Board was the request by Dylan Steele, project contractor, representing Andrew and Jamie Hart, for variance approval to allow for the construction of an addition to an existing building that fails to meet waterfront and roadside setback requirements established by Section 4.24 – *Waterfront Lots* and Section 4.41 – *Schedule of Lot, Yard and Area Requirements*, Zoning Ordinance. The subject property is located at 10928 South Drive and is within the R-2 District.

Acting Chairperson Jeska opened the public hearing.

Dylan Steele, project contractor, was present on behalf of the application. He provided an overview of the request, noting the following:

- The subject property is currently occupied by a 964 sq ft single-family dwelling (cottage) and a 526 sq ft detached accessory building; both are lawful nonconforming buildings due to setback.
- On April 14, 2022, the Planning Commission granted Special Land Use Permit/Site Plan Approval for the construction of a 2-story addition to the 526 sq ft nonconforming accessory building and conversion of same to the principal dwelling on the subject site . . . conditioned upon:
  1. Compliance with applicable setback requirements;
  2. Approval of a storm water management plan by PCI; and
  3. Approval of the required sewer permit.

- The existing accessory building [approved for conversion to the principal dwelling] is provided a 68 ft waterfront setback (48 ft required); a 15 ft rear setback (35 ft required); and, a 7 ft side setback (10 ft required).
- The proposed addition to the accessory building proposes a 39 ft waterfront setback; a 15 ft rear setback; and, a 7 ft side setback.
- The waterfront setback requirement exceeds the minimum 35 ft due to setback averaging and the situation of the adjacent parcel on the cove; the rear and side setbacks proposed are intended to continue the lines of the existing building.
- Variance approval from the waterfront, rear and side setback requirements is requested for the proposed addition.

Jamie Hart elaborated that a 7 ft side setback is proposed to allow for a continuation of the building line so that its appearance as an accessory building can be changed. She further noted that they desire to use the existing well on the site, which limits configuration options for the addition.

Noah Eastor, neighboring property owner, noted that the proposal will add value to the neighborhood and that he supports the requested variances.

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

In response to Board questions, Ms. Harvey explained that the special land use permit granted by the Planning Commission was required due to the proposed expansion of a nonconforming building. She noted that the permit was conditioned upon compliance with applicable setback requirements. The granting of the permit does not bind the ZBA in consideration of the variance requests, nor does a granting of the variance requests invalidate the permit granted by the Commission.

Board discussion ensued regarding elements of the proposal and the accuracy of the site plans. Several dimensions of the site plan were brought into question, prompting inquiries on options available for compliance.

The Board then proceeded with a review of the variance criteria set forth in Section 7.5. Specifically, the following findings with respect to the requested side setback variance were noted:

#1 – The requested setback variance will not serve to ‘permit the establishment of a use’ which is not allowed within the R-2 District.



#2 – It was recognized that a denial of the variance would not prevent reasonable use of the property and that adequate area exists on the site to reconfigure the proposed addition to comply with the 10 ft setback requirement.

#3 – In determining substantial justice, a review of the building arrangements on surrounding property was completed. Side setbacks on several properties to the north of the subject site are less than the required 10 ft, however, the overall pattern of development in the area reflects compliance with the setback requirements. Further, it was reasoned that the nonconforming setbacks to the north should not serve as the guide for new development in the area.

#4 – There are no unique physical limitations on the site preventing compliance. Further, the subject site is a conforming lot, consistent in size and dimension with the requirements of the R-2 District.

#5 – The proposed construction is at the discretion of the property owner and represents a self-created hardship.

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

: The side setback requirement set forth in Section 4.41 was established to address issues of building separation, access, safety and light/ventilation.

: The side setback on the lot adjacent to the north is also reduced, raising concern that the proposed extension of the 7 ft setback will provide adequate building separation, access, safety and light/ventilation.

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

Mr. Mitchell then moved to deny variance approval from the 10 ft side setback requirement so as to allow a 7 ft side setback for the proposed addition, based upon the findings of the Board on Variance Criteria #2-#6 set forth in Section 7.5, Zoning Ordinance. Ms. Dalke seconded the motion. The motion carried unanimously.

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

#1 – The requested setback variance will not serve to ‘permit the establishment of a use’ which is not allowed within the R-2 District.

#2 – It was recognized that a denial of the variance would not prevent reasonable use of the property, however, reconfiguration options for compliance with the 35 ft rear setback requirement are limited due largely to grade.

#3 – In determining substantial justice, a review of the building arrangements on surrounding property was completed. Rear setbacks on many properties in the area are less than the required 35 ft.

#4 – Extreme grades on a portion of the site constitute unique physical limitations preventing compliance.

#5 – The proposed construction is at the discretion of the property owner and represents a self-created hardship.

#6 – The intent of the rear setback requirement was referenced and the following noted:

: The rear setback requirement for waterfront lots set forth in Section 4.24 was established in 2008 to afford adequate area for off-street parking, provide building/roadway separation for safety, and establish consistency of building lines.

: The existing building is set back 15 ft from the r.o.w. of South Drive; the proposed extension of that 15 ft setback will not increase the existing setback encroachment.

: The proposed setback of 15 ft will not reduce the off-street parking area or the building/roadway separation beyond that which currently exists.

: The subject site is situated at the end of a low-volume private road.

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

Mr. Mitchell then moved to grant variance approval from the 35 ft rear setback requirement so as to allow a 15.5 ft rear setback for the proposed addition, based upon the findings of the Board on Variance Criteria #1, #2, #3, #4, and #6 set forth in Section 7.5, Zoning Ordinance. Ms. Dalke seconded the motion. The motion carried unanimously.

Lengthy discussion then ensued regarding the requested waterfront setback requirement. Concern was again expressed regarding the accuracy of the plan dimensions and how it impacted the Board's discussion of options for compliance.

Mr. Mitchell then moved to postpone consideration of the waterfront setback variance to a special ZBA meeting to be scheduled for May 12, 2022 at 6:00 p.m. to allow the applicant time to provide accurate site dimensions and to reconfigure the proposed addition to comply with the 10 ft side setback requirement. Acting Chairperson Jeska seconded the motion. The motion carried unanimously.

### UNFINISHED BUSINESS

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

### NEW BUSINESS

Acting Chairperson Jeska stated that no 'New Business' was scheduled for Board consideration.

### *COMMUNICATIONS*

No Board/staff communications were offered.

### ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 10:15 p.m.