

**PRAIRIEVILLE TOWNSHIP
ZONING BOARD OF APPEALS**

December 6, 2023

PRESENT: Chairperson Dale Grimes, Richard VanNiman, Jaci Dalke, Ted DeVries, Dan Jeska

ABSENT: None

ALSO PRESENT: Rebecca Harvey, Township Planning Consultant

CALL TO ORDER

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

APPROVAL OF AGENDA

Mr. VanNiman moved to approve the agenda as presented. Mr. DeVries 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 July 5, 2023. Mr. VanNiman moved to approve the minutes as presented. Mr. Jeska seconded the motion. The motion carried unanimously.

The next matter to come before the Board was consideration of the proposed minutes of October 4, 2023. It was noted that the address reflected in the introduction of the Grimes application (1st paragraph, page 2) was incorrect and should be revised to reference 7081 Division Avenue instead of 11103 Long Point Drive. Mr. VanNiman moved to approve the minutes as corrected. Ms. Dalke 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 - Grimes

The next matter to come before the Board was the request by Ben Clark, Clark Brothers Contractors, representing Jeff and Julie Grimes, for variance approval to allow for the construction of a single-family dwelling that fails to meet applicable waterfront and rear (streetside) 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 7081 Division Avenue and is within the R-2 District.

Chairperson Grimes explained that the application had been considered by the Board at the October 4, 2023 meeting wherein the variance request from the 35 ft waterfront setback requirement so as to allow a proposed 12.5 ft setback was denied . . . and the variance request from the rear (streetside) setback requirement so as to allow a proposed 17.5 ft setback was postponed ‘to a date to be determined’ . . . ‘to allow the applicant to consider options for redesign’.

It was explained that given the matter was not postponed to a date specific, the rear setback variance request was required to be re-noticed for public hearing. It was noted that, in light of the new public hearing notice, the applicant modified the recently denied waterfront setback variance request, consistent with Section 7.4 D.2., and has again requested Board consideration of both the waterfront and rear (streetside) setback variances

Chairperson Grimes opened the public hearing.

Ben Clark, project contractor, was present on behalf of the application. Mr. Clark did not provide ‘options for redesign’ as requested by the Board in October, but did provide detailed responses to the variance criteria in support of the request for a 13 ft waterfront setback and a 17 ft rear (streetside) setback for the proposed single-family dwelling/attached garage/deck on the subject site. He reasoned the following:

#1 – The proposed use is allowed within the R-2 District.

#2 – Given the nonconforming size of the lot, significant on-site grade changes, and frequent flooding conditions . . . reasonable options for compliance do not exist.

He further argued that the owner’s desire to have additional storage, core necessities on a single floor level, similar waterfront views as neighboring

properties, improved architecture and home value, and outdoor living areas rendered compliance unnecessarily burdensome.

#3 – Granting the variance would do substantial justice for neighboring property owners in that it would negate the need for significant grade changes on the site, which the neighbors do not want. Further, not granting the variance will limit what can be built on the site, which will impact storage and parking and likely result in substandard architecture. He further noted the applicant’s wish to enjoy the property and enjoy lakefront living . . . which will add value to the property and the neighborhood.

#4 – He reviewed in detail the grade changes on the site and the work needed to comply with applicable setback requirements. He also noted the nonconforming size of the lot . . . which further serves to restrict buildable area.

#5 – He stated that the current owners did not create the nonconforming lot size or the grade limitations on the site.

#6 – The proposed setbacks will be similar to existing foundation setbacks and so will maintain the current shoreline separation and visibility sightlines. Compliance will require grading that will impact the shoreline and alter existing building alignment.

Mr. Clark referenced Exhibits A. – L. as supporting documents.

Chairperson Grimes requested clarification of the specific setbacks proposed. Mr. Clark responded that he is requesting a waterfront setback of ‘up to 13 ft’ and a rear setback of ‘up to 17 ft’ . . . but is seeking direction from the Board on what they might consider.

Mr. DeVries expressed discomfort with the request for ‘up to 13 ft’. He asked why a specific proposal could not be presented. Mr. Clark responded that the applicant would like a 13 ft waterfront setback (or a 22 ft variance) and a 17 ft rear setback (or 8 ft setback).

In response to Board questions, Mr. Clark confirmed the following details:

- The proposed deck is 6 ft in width.
- The existing accessory building is proposed to remain with no change to the existing footprint.
- There is no existing basement.

- The existing dwelling is provided a 22 ft waterfront setback and a 30 ft rear (streetside) setback. The rear setback is currently in compliance with the 25 ft setback requirement.

Mr. VanNiman stated that he generally does not support the expansion or continuance of a nonconforming situation, but that he felt the arguments presented were compelling.

In further discussion with the Board, Mr. Clark admitted that options for compliance with the setback requirements were available but that serious grading and filling would be required to do so . . . and that he did not think it would be good for the neighborhood. He acknowledged that the proposed addition of the attached garage is the cause for the new rear setback encroachment but argued that the addition of a garage was not unreasonable given the limited use of the existing accessory building for anything but storage. He added that removing the existing accessory building would not improve the setback situation for the new construction given the differences in grade horizontally across the site. He further noted that the proposed reduction of the existing 22 ft waterfront setback was largely due to the proposed 6 ft wide deck.

Mr. Clark summarized by explaining the goal is to replace the house and add a usable garage within the existing level area on the site and avoid extensive grading/filling.

Mr. Campbell, adjacent property owner, expressed support for the proposal.

Chairperson Grimes also noted the letter of support received by Ms. Bocar, neighboring property owner, included as Exhibit A in the applicant's handout.

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

Mr. VanNiman then moved to grant variance approval from the 35 ft waterfront setback requirement so as to allow the proposed 13 ft setback . . . and variance approval from the 25 ft rear (streetside) setback requirement so as to allow the proposed 17 ft setback . . . based upon the applicant's presented findings on Variance Criteria #1-#6. Mr. Jeska seconded the motion. The motion carried 3-2, Chairperson Grimes and Dalke dissenting.

VARIANCE REQUEST - Curbey

The next matter to come before the Board was the request by Michael Curbey for variance approval to allow for the construction of a proposed deck

system that fails to meet the applicable waterfront setback requirement established by Section 4.24 – *Waterfront Lots*, Zoning Ordinance. The subject property is located at 15585 Locke Lane and is within the R-2 District.

Chairperson Grimes opened the public hearing.

Michael Curbey was present on behalf of the application. Mr. Curbey provided an overview of the proposal, noting the following:

- The existing deck system (deck and staircase) are deteriorated and require replacement.
- A reduced and reconfigured deck and relocated stairway are proposed in the same general location, along with the addition of a 15 ft deep upper story deck area with a roof to replace the existing 5 ft wide walkway.
- Pursuant to Section 4.24, the required waterfront setback on the subject site is 180 ft (average setback of adjacent dwellings – 80 ft [south side] + 280 ft [north side] = 180 ft).
- The existing house is provided a 124.5 ft waterfront setback; the existing walkway is provided a 118 ft waterfront setback; and the existing deck system is provided a 101.5 ft waterfront setback . . . all in violation of the 180 ft setback requirement.
- The new deck is proposed to be provided a 98 ft waterfront setback . . . approximately 3.5 ft closer than the existing deck.
- The new upper story deck and roof are proposed to be provided a 108 ft waterfront setback . . . approximately 10 ft closer than the existing walkway.
- The new reconfigured deck will increase the side setback from 7 ft to 12 ft, in compliance with the 10 ft side setback requirement.

He further noted the size of the site and of the adjacent properties; the separation between the existing dwellings; the on-site vegetation . . . and the lack of objection by neighboring property owners.

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

Mr. DeVries inquired about the status of the proposed ‘reduced and reconfigured deck’. Mr. Curbey admitted that the deck was already constructed. He explained that he was unaware that the contractors had not obtained the necessary building permit . . . but also learned that there was a lengthy delay in hearing from PCI on the status of the permit and so construction commenced

without awareness of the setback issue. He explained that the setback issue came to light in connection with the upper story deck and roof proposal.

Ms. Harvey noted that the deck was constructed without a building permit and in violation of the Zoning Ordinance, but that said conditions are not a factor in the ZBA's consideration of the variance request. They should be guided solely by the variance criteria established by Section 7.5.

Chairperson Grimes inquired about the 'stairway' indicated on the survey. Mr. Curbey confirmed that the stairway was removed and replaced with pavers. No new stairway is proposed.

The Board 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 the subject site is currently occupied by a dwelling and that a denial of the variance would not prevent reasonable use of the property. Given the nonconforming location of the dwelling, it was noted that no addition can be made to the east (waterfront) side of the dwelling in compliance with the 180 ft setback requirement, however, the deck replacement will change the existing nonconforming situation and result in a slightly reduced waterfront setback.

#3 – In determining substantial justice, a review of the building arrangements on surrounding property was completed. It was noted that the setback averaging approach for waterfront lots applies and is designed to consider existing setbacks on adjacent properties, thereby providing 'substantial justice'. It was also recognized that the average waterfront setback on the 9 developed lots within Lockshore Plat is 210 ft . . . greater than the proposed 98 ft setback.

#4 – There are no unique physical limitations on the site preventing compliance.

#5 – The location and configuration of the existing dwelling/deck were at the discretion of the property owner, as is the location and configuration of the proposed deck system . . . resulting in practical difficulties created by an affirmative action of the property owner. It was recognized that the adoption of the 'averaging approach' employed by Section 4.24 was likely adopted after the construction of the dwellings in the area.

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

- The proposed 98 ft waterfront setback is greater than the required minimum waterfront setback of 35 ft, suggesting waterfront/building separation and shoreline preservation objectives will be met.
- The dwelling adjacent to the south is provided an 80 ft waterfront setback . . and is located at least 285 ft south of the proposed deck. Viewshed impacts will be minimal.
- The dwelling adjacent to the north is provided a 280 ft waterfront setback . . but the vegetation along the common property line limits the viewshed impact of the proposed deck replacement.
- The proposed 98 ft waterfront setback will only be decreasing the existing waterfront setback of 101.5 ft by 3.5 ft . . suggesting a minimal change of conditions.
- The subject site and adjacent lots are significant in size.

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

Ms. Dalke moved to grant variance approval from the 180 ft waterfront setback requirement to allow the proposed 98 ft setback for the new deck system based upon the findings of the Board on Variance Criteria #1 and #6. Mr. VanNiman seconded the motion. The motion carried unanimously.

Ms. Harvey advised Mr. Curbey that the proposed construction will result in an expansion of a nonconforming building and an increase in the existing nonconforming waterfront setback and will require a Special Lan Use permit from the Planning Commission pursuant to Section 6.17. She noted that the application process can be completed through PCI.

UNFINISHED BUSINESS

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

NEW BUSINESS

COMMUNICATIONS:

Mr. DeVries advised that Chairperson Grimes and Ms. Dalke were reappointed by the Township Board to each serve another term on the Zoning Board of Appeals. He also noted that G. Stoneburner has been appointed as a Board Alternate. He asked that Board members advise the office if they will be

unable to attend a meeting so that the Alternate may be advised and asked to serve.

In response to questions, Mr. DeVries advised that updated pages to the Zoning Ordinance were recently distributed and to let the office know if the updates had not been received.

General discussion ensued regarding the process employed by the Township for confirming compliance with decisions rendered by the PC and ZBA.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 10:09 p.m.