

TO: Planning Commission
FROM: Peter Gansen, Planning & Zoning Administrator
RE: Staff Report for V-24-013
DATE: December 10, 2024 Regular Meeting



Variance Application V-24-013
Applicant: STUART & PAULA PYSICK
Property Address: 9813 WEAVERS POINT RD
Legal Description: THAT PART OF GOV. LOTS 1 & 2 SEC. 15
Parcel ID: 10150512
Zoned: R-2 Medium Density Residential/Unsewered

- Applicant has filed the appropriate application.
- Applicant has paid the appropriate fee for the application.
- Public notice of the Hearing was published in the legal newspaper and all property owners within 350' were mailed a notice of hearing.
- Public notice was given to the DNR, as the property is in the shoreland district.

Variance Request:

- Is requesting a variance from the required 75 foot ordinary high water level setback on a general development lake (Pelican), a variance from the required 10 foot property line setback and a variance from the maximum impervious surface allowance of 25% to construct a 5ft x 14ft addition onto an existing non-conforming residence located by 71ft from ordinary high water level, 9.9ft from the property line at 26.4% impervious surface coverage.

Summary of the property

This property is un-platted land that was subdivided via metes and bounds. The property has now been surveyed as part of this process.

The property is in a lake shore residential zoned area towards the end of Weavers Point Road. The adjacent neighbors are similar year round homes and seasonal homes. The property requires the 75 foot structure setback because these properties are on their own septic systems.

The adjacent neighbor's properties are similarly developed with single-family year-round/seasonal cabins.

The City has established structural setbacks with minimum residential structure sizes and the proposed additional location appears to meet these standards.

However, the residence itself is a non-conforming structure because it does not meet the lake setback or the property line setback and it exceeds the allowed lot coverage and therefore requires variance approval if it is to be constructed.

Based on the information presented at this time and in the applicants survey it appears the proposed addition is minimal in size and appears to be proposed in an area already covered with impervious surface.

Please see the impervious surface table on the site plan drawing and the location of the proposed addition.

Aside from removing small parts of the deck and a part of though house that encroach there appears to be no other feasible remedies that exist that could be explored to alleviate the need for the variance due to the non-conforming location of the existing house. But the applicant could easily remove some impervious surface somewhere else on the property get back in conformance with the impervious surface allowance of 25%.

The applicant could also install engineered pervious product that would not require a variance and also meet this standard.

There are many non-conforming properties that are bought and sold and have very limited or no expansion opportunities. It is also the landowner's responsibility to be aware of development limitations with their property as rules change over time.

The proposed project in the application material submitted at this time appears to meet the spirit and intent of ordinance, by proposing the addition in an area meeting setbacks. However, staff fails to see any hardship or practical difficulty relating to the impervious surface request.

Please keep in mind that granting a variance does not create or set a precedence. This Planning Commission/Board of Adjustment is the venue for deciding whether unique circumstances exist that create a practical difficulty and justify variance approval.

The Commission can grant a variance on one property and not on another, given they follow the proper procedure and adopt the appropriate findings. This is based on prior case law and the findings of fact can be considered uniquely and applied to the subject property in different place and time.

Staff recommends the Commission consider approval based on the plans submitted in the application with the following proposed condition.

- 1) **Variance request for impervious surface allowance is not granted. The applicant must submit a plan that requires approval from the City to meet impervious surface allowances before a building permit is issued.**

If the Commission denies the applicant could modify the building to meet setbacks and not require a variance to build. This would involve removing the parts of the deck and house that encroach into the setbacks.

The following are recommended findings the Commission can adopt.

Notice of Decision and Findings of Fact

The Planning Commission shall consider the following in its decision and make written findings concerning the variance approval or denial.

- (1) The strict interpretation of the ordinance would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner;

Yes, the lot is over the allowed impervious surface coverage area. Hardscape areas can be removed to meet the allowed 25 percent impervious coverage. The encroaching portions of the structure could be removed and the addition would not require a variance.

- (2) The deviation from the ordinance with any attached conditions will still be in keeping with the spirit and intent of the ordinance;

Yes, the proposed addition's location is not reducing or encroaching setbacks and the owner can remove impervious surface areas to meet ordinance requirements.

- (3) The land use created by the variance is permitted in the zoning district where the property is located;

Yes, residence additions are allowed in this zoning district.

- (4) The variance will not alter the essential character of the locality;

The proposed request is residential similar to the adjacent neighbors and shares similar setbacks.

- (5) The variance is not for economic reasons alone, but reasonable use of the

property does not exist under the ordinance.

Yes, technically reasonable use already exists, and this addition is land owner preference.

Without the variance the landowner could still add the addition, it would just require removing small areas of the deck and house that are within the setbacks and the economics bore to the applicant to do so

However, the current owners likely did not create this situation, and the encroachments into the setback could be considered minimal and the size of the addition is so small that the City would not gain much by requiring the applicant to remove the encroachments.

If the addition proposed was much larger then it would be more reasonable to require compliance with all setbacks and look at the project from a more comprehensive view. The economics here do not appear to be the only limiting consideration. See findings 1-5.

With the following condition.

1) The variance request for impervious surface allowance is not granted. The applicant must submit a plan that requires approval from the City to meet impervious surface allowances before a building permit is issued.