

TO: Planning Commission
FROM: Peter Gansen, Planning & Zoning Administrator
RE: Staff Report for V-24-002 SACKREITER
DATE: July 9, 2024 Regular Meeting



Variance Application V-24-002

Applicant: James & Susan Sackreiter

Property Address: 32601 Timberlane Point

Legal Description: LOT 31 & ALSO INCL PT OF VACATED TIMBER LN ON DOC #897023

Parcel ID: 10030538

Zoned: R2 Unsewered General Development Lake (75FT OHWL Setback)

- The applicant did not have the required in person pre-app meeting with staff.
- Applicant has filed the appropriate application for a variance.
- Applicant has not paid the appropriate fee for the application. The fee was waived by prior zoning administration, the City has paid for all filing and postings associated with this application, as this is not recommended by current staff. As City the staff time and resources involved in processing and reviewing variance request by far exceeds the de-minimis cost of 250 dollars.
- 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 a shoreland overlay district.

Variance Request:

- A variance from the required 75ft ordinary high water setback from a General Development Lake "Ossaswinnamakee" to a setback distance of 24ft and a variance to exceed the maximum allowed impervious surface coverage of 25% to 35.56% to construct 8ft x 32ft residential addition on a non-conforming structure.

Summary of the property

LOT 31 Trotter-Cade was platted in 1961, the property is located at 32601 Timberlane Point. The property is in a residential neighborhood bordered seasonal and year-round residences.

The existing residence is considered an existing non-conforming structure "grandfathered" meaning it does not meet today's standards and would not be allowed.

The current owner did not construct the building but purchased the property as it sits today. Buying and developing any property is always speculative and there are no guarantees. Especially when buying a property that sits less than 1/3rd of the setback to the lake. Shoreland standards have been in effect since 1969, this is far from anything new.

It's at the time prior to purchase is when landowners need to do their due diligence as all properties are effected by certain zoning districts in any city, or town. That would have been the appropriate time to ask the variance request upon a contingency of the property purchase. This is not an uncommon question, as a matter of fact it is actually uncommon that people do not seek this information out a head of time. The phone in the zoning office rings with these questions on a daily basis.

As I was very specific with the applicant when we spoke in January. Nothing prohibits anyone from making any variance request no matter how egregiously out of standards it is. But one also needs to be prepared for the answer to such questions. If staff did not respond honestly and accordingly staff would not be doing what the City hired them to do.

This variance request asks is putting the burden on the Planning Commission to make several serve waivers to basic shoreland zoning standards. New building expansion in shore impact zone 1 and a gross overage in the amount of impervious surface allowed, that could be reduced by the applicant however the applicant still chooses not to.

In summary the plan needs to compromise to reduce hard coverages and relocate the addition to an area not reducing the lake setback. So this is not the right fit for the property. It's essentially trying to put 10 pounds of sugar into a sack that is only big enough to hold 5 pounds of sugar.

A question each of the board members should ask themselves in consideration of the following variance request is. IF this exception is made on this property, are we ready to make this exception every time for every property? This request is such an extreme request and deviation from shoreland standards it is okay to deny it.

Denying the variance will not take away any use the current property enjoys. The property actually gets to enjoy more than other lake properties in that the setback is so extreme here.

Yes variances do exist on some properties and minimal allowances are allowed from time to time, however this proposal is more akin to a commercial resort ask.

Additionally if this was a tear down rebuild, which is becoming more and more common within the shoreland district the project would be held to the current impervious surface standard of 25% which all new construction has been for years.

The following are staff's recommended findings the Commission can adopt for denial.

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;

No, the existing structure was created by a prior landowner. The property does sit on a platted peninsula; however this was platted before ordinance standards and would never be allowed to be subdivided as such today. The landowner could reconfigure the addition to the side or rear of the structure and not need such an extreme variance related to shore impact zone 1. The property also already exceeds the impervious surface coverage allowed within this zoning district.

The property already enjoys the setback as it sits today to which new construction of such would never be considered.

Exceptional properties need exceptional design considerations. These plans seem to be largely landowner preference with no consideration for today's standards. The proposed plans can be reconfigured to not need a reduction to the setback. Existing hardscapes can also be reduced to meet impervious surface standards. If this was a tear down rebuild the project would still be held to the 25% impervious standards.

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

No, the encroachment into the setback is extreme and the front facing expansion as proposed will significantly increase the visual impact as viewed from the public waters. Ossaswinnamakee is a very narrow lake, so this is an extremely visible structure already with respect to the setback the building currently enjoys. For instance, if this was on a larger lake like Big Pelican or Whitefish visual impact would be not quite as critical as it is here. Due to the unique narrow width of the lake and the property's location on the peninsula, visual impact is critical here. There is very little if any vegetative screening between the structure and the lake. The addition could be put on the backside of the structure.

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

No, the zoning district requires a 75FT minimum setback from the lake and the proposed addition is less than third of that distance.

The property is also over impervious surface coverage. The only zoning district that allows for such coverage would be commercial and this is not commercial property, this is seasonal/Year round residential zoning. The proposed plans as presented do not fit the property and fail to consider the uniqueness for the property to meet the design standards required to meet the lot coverage allowances.

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

It will alter the locality. As stated in finding #3 this request is proposing impervious surface coverage numbers as found in commercial zoning, and this is not commercially zoned property.

The adjacent neighbors do not have such extreme impervious coverages. The nearest commercially zoned property is a campground on the other side of the lake and even most of their buildings meet or exceed the lake setbacks required and not even developed at the impervious limits allowed.

- (5) The variance is not for economic reasons alone, but reasonable use of the property does not exist under the ordinance.

No, economics aside the proposed additions could be reconfigured to the back of the structure and the interior of the building could be reconfigured as such and not require a setback reduction variance from the lake. Existing hardscapes can also be removed and reduced to better meet impervious surface standards. If this project was a complete tear down rebuild the impervious overage amounts would not be allowed.

Reasonable use exists in the enjoying and maintaining the current residence as is situated closer to the lake than other properties get to enjoy.

Additionally, the stormwater management plan provided did not propose the reduction of hardscapes to meet the impervious surface requirements.

And if economics were considered the City of Breezy Point has hosted this variance application by waiving the variance fees in this instance. Which is not typical practice.

The City has already funded this application, if the City approved the request and it gets appealed by the DNR as seems likely based on the letter. This will put additional cost burdens onto the City of Breezy Points taxpayers to defend a variance decision that likely would get over turned.

In summary of all of the above findings, it is the intent of the City of Breezy Points Ordinance, Policies and Comprehensive Plan to move properties towards compliance with existing rules and standards, and not to continually allow, expand and support development that is not harmony with these standards.