



MCKENNA

April 25, 2024

Board of Zoning Appeals
Village of Lake Orion
21 E. Church Street
Lake Orion, MI 48362-3274

Subject: A-24-02 136 Axford; Variance Review #1
Parcel #: 09-02-404-025

Dear Board Members:

We have reviewed the above-referenced variance application submitted by Steve Overmyer to install an above-ground pool within their fenced-in backyard. The residence is located on the east side of N Axford Street and is zoned RV (Village Single Family Residential). The subject site has an existing single-story dwelling with an attached single-story, two-car garage.

REQUEST

The proposal requires the following two (2) variances from the Zoning Ordinance:

1. ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RV ZONING DISTRICT

- Rear (East) Yard Setback - 25.00 feet minimum required
- 10.00 feet proposed
- *15-foot variance requested*

2. ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RV ZONING DISTRICT

- Lot Coverage - 40% required
- 41.95% proposed
- *1.95% variance requested*

COMMENTS

Per Section 19.04.D.1 of the Village’s Zoning Ordinance and the *Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended*, the Board must, prior to acting on a proposed variance, consider and make findings regarding several factors. The Board may grant a dimensional (or non-use) variance upon a finding that practical difficulties exist. To meet the test of practical difficulty, the applicant must demonstrate compliance with ALL of the following:

- (a) **Compliance with Ordinance standards prevents use of property or is unnecessarily burdensome.**
The minimum required lot size for parcels in the RV district is 7,200 square feet and the required lot width is 60 feet. With an area of approximately 5,768 sq. ft and a lot width of 62 feet, the subject site is nonconforming with respect to the minimum required lot area for the district. The subject parcel was likely the result of a previous split of a lot which had complied with previous Village zoning standards.



The parcel is currently occupied by a one-story dwelling with an attached single-story, two-car garage. The existing dwelling conforms with front and rear setbacks but is nonconforming with side setbacks; we have no evidence of approved variances to the side setbacks. The recently constructed deck, a detached accessory structure, is conforming with respect to all setbacks and lot coverage.

We do not find the Zoning Ordinance standards to be unnecessarily burdensome in this case as *in-ground* pools are allowed to encroach within the required rear setback and overall lot coverage could be brought into compliance by shrinking the deck by approximately 112 square feet. These alternatives would allow the applicant to maintain compliance with the Zoning Ordinance. Increased cost for in-ground pool is not a legitimate burden preventing use of the property for a permitted purpose.

- (b) **The variance will provide substantial justice to applicant as well as property owners.**
Approval of the variance would provide substantial justice to the applicant, as a pool is a permitted accessory structure for single-family homes; however, we note again that an in-ground pool and smaller deck could meet the standards of the Ordinance. It would not provide justice to neighbors to approve a variance at the subject property where a variance for the same may be reasonably denied at another time on a similar property; if the circumstances are shared among nearby property owners, an amendment to the Ordinance is more appropriate, and this responsibility must fall within the purview of the Planning Commission and Village Council.
- (c) **Variance requested is minimum possible.**
The variances requested for the subject property are not the minimum possible, as mentioned under Item (a), lot coverage can be brought into compliance with a smaller deck, while an *in-ground* pool could achieve compliance with setback requirements.
- (d) **Need for variance(s) is due to unique circumstances peculiar to the property.**
The size and shape of the lot, though nonconforming, are not unique when compared to adjacent properties within the district. Although the arrangement of structures on the lot inherently prevents an above-ground pool, current regulations for swimming pools have been in place since at least 2006 and the existing home was constructed in 2008/2009. Thus, the circumstances surrounding the request are not unique to the property, but indicate a self-created need for a variance.
- (e) **Problem necessitating variance is not self-created.**
The variance is entirely self-created; case law tells us that a self-created variance includes the actions of the current property owner and the actions of all previous owners. The Applicant took affirmative action to construct a deck on their property, which, at minimum, necessitates a variance for lot coverage for an above-ground pool. The lot split that rendered the shallow lot depth was an affirmative action by a previous owner – which appears to have been common in this neighborhood – creating the need for a variance for an above-ground pool regarding the rear yard setback.



RECOMMENDATION AND FINDINGS

Subject to any additional information presented and discussed by the applicant, Board, and/or the public during the public hearing and incorporated into the record prior to any findings being made, we recommend that the Board of Zoning Appeals **deny** the requested variances for the property located at 136 Axford Street, based on the following findings of fact:

- (1) Compliance with the ordinance standards would not be unnecessarily burdensome or prevent the use of the property for a pool, provided it is an *in-ground* pool, which, though more expensive, would be a reasonable alternative.
- (2) Substantial justice would be provided to the applicant but would not be afforded to the neighborhood, where similar lots and circumstances exist.
- (3) The variances requested are not the minimum possible, as compliance with these standards could be achieved through an alternative design.
- (4) The property, though nonconforming, does not present unique circumstances compared to other properties in this neighborhood or district.
- (5) The need for the variances is entirely self-created.

The Board, after issuing denial of the variances, may provide direction to the applicant to initiate a text amendment to the Zoning Ordinance. Current regulations are broadly applicable to all residential lots and substantial justice could be done by amending the Ordinance to include setback standards for swimming pools within smaller, nonconforming lots.

Should you have any questions, please reach out to me.

Respectfully,

McKENNA

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Associate Planner

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