



MCKENNA

June 6, 2024

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

Subject : A-24-03 : 512 Longpointe Variance Requests
Parcel: OL-09-02-351-002

Board Members:

We have reviewed the above-referenced variance application submitted by Ron and Linda Roy (the “Applicant”) who propose demolishing an existing two-story single-family home and building a new three-story single-family home. The property is located on the west side of Longpointe Drive and is zoned RL, Lake Single Family Residential. The lot is legally nonconforming with respect to its area (7,200 SF required vs. 4,362 SF – including accreted land) and is 70-ft.-wide by an average of about 60-ft.-deep. An existing boat house on the property will remain.

In April and May 2019 and again in April 2020, different variances had been granted by the Board for this property; the minutes for those meetings are attached. Per Section 19.04(I), Board approval is no longer valid if the approved structures or uses are not established within 12 months. In any case, this is a different request and must be reconsidered and, as with all variance requests, all cases must be considered on an individual basis.

REQUEST

To build the proposed home, the applicant is requesting three (3) variances from the Zoning Ordinance:

ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RL ZONING DISTRICT

Lake Front (West) Yard Setback:	25.0 feet minimum required 12.5 feet existing / 13.1 proposed 11.9-foot variance requested
Street Front (East) Yard Setback:	25.0 feet minimum required 0.0 feet existing / 11.7 feet proposed 13.3-foot variance requested
Maximum Building Height	30.0 feet maximum required 25.0 feet existing / 34.3 proposed 4.3-foot variance requested

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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 a practical difficulties exists. To meet the test of practical difficulty, the applicant must demonstrate compliance with ALL of the following:

- (a) **Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.**

The site is zoned for single-family residential uses. Compliance with the required street and waterfront setbacks would result in a buildable area of roughly 5 ft. by 60 ft., effectively preventing the establishment of a principal permitted use on the property. Compliance with the required maximum building height, however, would not prevent the use of the property, as reasonable alternative design solutions could be employed.

- (b) **The variance will provide substantial justice to applicant as well as neighboring property owners.**

Approval of the variances to the required setbacks would provide substantial justice to the applicant by allowing them to establish a principal permitted use on the property. This provides justice to neighboring property owners as well insofar as the Village is upholding the intent of the single-family districts to encourage construction of single-family dwellings and investment in property, thereby enhancing the neighborhood.

Approval of the variance to the maximum required height, however, would only provide justice to the applicant. Particularly on the lake, minimizing the height (and mass) of structures and preserving viewsheds is of critical importance to the Village as a whole. Upholding these standards for this property with visibility from the lake on two sides would provide substantial justice to neighboring properties and users of the lake.

- (c) **The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.**

The proposed home is roughly 31 ft. deep by 57 ft. wide. It is likely that the requested setback variances are not the minimum possible, as the floor plans could be modified to further reduce the footprint. No room within the proposed home, except for possibly the second floor living room, appears to have a dimension larger than 25 ft.; homes on narrow (but relatively deep) lots around the lake have been built to this width, which is enough space to accommodate a hallway and any reasonably sized room. With three floors, there is plenty of opportunity to reorganize rooms, decks, and throughways to achieve a lesser variance. Similarly, but more concretely, reasonable design alternatives could bring the home into full compliance with the maximum height requirement.



- (d) **The need for variance(s) is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.**

Though regularly shaped, the subject parcel is nonconforming, as it is smaller than required for the district. While small, nonconforming lots are not uncommon around the lake, the buildable area of the lot is severely limited due to the shallowness of the property as originally platted, which is not generally applicable to other properties in the district (except for the applicant's immediate neighbors) which trend toward longer (deeper) and narrower lots. The need for a variance to the maximum building height standard is not due to any unique circumstances peculiar to the property.

- (e) **The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, and not by the applicant or applicant's predecessors; it is not self-created.**

The applicant is taking affirmative action to demolish the existing nonconforming home, rather than maintaining and upgrading, to build a larger nonconforming home. This logic holds for the requested variance for building height, which is entirely self-created, as reasonable alternative design solutions can be employed to achieve compliance. But whether through affirmative action by the applicant or some act of nature the house is lost, as mentioned above, the peculiar lot depth necessitating variances for street and waterfront setbacks is not self-created, as this is an originally platted lot (with additional accreted land) and has been rendered unbuildable by through strict compliance with the Ordinance.



RECOMMENDATION

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 **approve reduced variances** from the minimum required street and waterfront setbacks, for the proposed single-family home at 512 Longpointe, based on finding that:

- (1) Compliance with the ordinance standards for street and waterfront setbacks renders the lot unbuildable, thus preventing the establishment of a principal permitted use.
- (2) Substantial justice would be afforded to the applicant and neighbors by encouraging the construction and establishment of single family homes and uses, thereby enhancing the neighborhood.
- (3) The variances requested are not the minimum possible; the applicant must pursue alternative layouts to achieve no more than a 10-ft. variance from either setback.
- (4) The parcel is prohibitively shallow and is not characteristic of most homes within the same district.
- (5) The need for the variances is not self-created, instead arising from strict compliance with the Ordinance on an originally-platted lot.

Further, we recommend that the Board of Zoning Appeals **deny** the requested variance from the maximum required building height, based on finding that:

- (1) Compliance with the ordinance standards for maximum building height would not prevent the use of property for a permitted purpose.
- (2) Substantial justice would not be afforded to the neighboring properties or the Village as a whole; minimizing the height and mass of structures on the lake is imperative and variances must pertain to the characteristics of the property itself – not to accommodate additional floors, rooms, or taller ceilings.
- (3) The variance requested is not the minimum possible; the applicant must pursue alternative designs to achieve full compliance.
- (4) The need for the variance is not due to any unique circumstances peculiar to the property.
- (5) The need for the variance is entirely self-created.

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

Respectfully,

McKENNA

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Assistant Planner

cc: Village Clerk: Sonja Stout, 21 E. Church Street, Lake Orion, MI 48362
Applicant: Rob and Linda Roy, 1859 Haverhill Drive, Rochester Hills, MI 48306