

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
April 27, 2016

The Zoning Board of Appeals hearing was called to order by Vice Chair Scott Parker at 7:01 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Paul Hoadley, Jordan Nystrom, Marilyn Morehead, and Scott Parker. Bill Henne was absent. Also present were Larry Sullivan, ZA, Marlene Golovich, Secretary and applicant Cheryl Zuellig .

Vice Chair Scott Parker asked to be joined in the Pledge of Allegiance.

The ZBA members introduced themselves.

Vice Chair Scott Parker reviewed the Order of Business and stated the purpose of the meeting is to hear a request a request by Vincent & Cheryl Zuellig for a 52 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a 10 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback to build an addition to an existing home, at 06069 Nine Mile Point Dr., Charlevoix, property tax number 15-007-400-049-00.

Zoning Administrator Larry Sullivan presented the following information;

PROPERTY INFORMATION:

- 1. Property Tax Identification Number: 15-007- 400 - 049 - 00**
- 2. Property Address: 06069 Nine Mile Point Drive**
- 3. Owners of Record: Vincent and Cheryl Zuellig**
- 4. Application for Variances - Received on March 10, 2016 for a 52 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a 10 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback**

EXHIBITS

5. Application Yes
6. Published Notice Yes
7. Notice of meeting sent to property owners within 300' Yes,
8. Site Plan Yes
9. Photos Yes
10. Other _____

FINDING OF FACT

11. Zoning District: *R2 Minimum lot size: 3/4 acre 120' lot width*
12. Lot Dimensions: *65 x 189'. Total lot acres/square footage: 12,307 sq. feet, .282 acres.*
13. Setback requirements: *Front 100' from Ordinary High Water Mark, Rear 25', Side 15'.*
14. Existing setbacks: *Front approx.48', Rear approx 110', Side approx 20' west lot line
Side approx 16' from east lot line.*
15. Existing non-conformities: *Lot size, front yard setback..*
16. Previous variance(s) granted: *1986 60' variance from Section 5.13 Shoreland
Protection Strip to Rodney Shackett (previous owner) to allow small addition to
dwelling and replacement of deck on waterfront side of home.*
17. Variance request from Section *4.13 Side Yard Setbacks requesting 10' side yard
variance to result in a 5' side yard setback on east side of property and Section 3.14 (2)
(a) Waterfront Regulations front yard setback requesting a 52' variance from the front
yard setback of the Zoning Ordinance to construct an addition .*
18. Unique features of property: *Legal Non-conforming parcel, lot not meeting minimum
lot size (width and overall square footage), dwelling constructed on property prior to
100' setback requirement in ordinance (perhaps constructed prior to zoning) .*
19. Adjacent property: *Parcel to the east contains single family home, parcel to the west
vacant.*
20. % Impervious Surface Allowed 20% Current 10% Proposed 11.7%_according to the
applicant. *My calculations reflect a Current % of 8.7% and a Proposed % of 11.8%
These figures do not include the deck, stairs or pea stone parking area. Including the
deck, stairs and driveway parking area results in a Current % of 21.3 and a Proposed %
of 24.4*

Zoning Administrator Presentation

Larry Sullivan stated that corrections needed to be made to number 14 & 19. The changes to #14 are; the current side yard setback from the east lot line is approximately 20 feet.

The changes to # 19 are; the lot to the east is vacant and the lot to the west has a residence.

Larry also stated the lot does not meet the minimum lot size in the R2 zone district and that the proposed addition will not exceed the lot coverage allowed in that district.

Larry passed photos out for review.

Applicant Presentation

Cheryl Zuellig, applicant, stated that she and her husband have owned the property for 8 years and they hope to retire to this property in the future. She stated the home is an A-frame design with the typical pitched roof that makes it difficult to add closets and space to the second level. The lot is 65' which she considers is a narrow lot. They are requesting two variances; one side yard setback variance and one front yard setback from the waterfront regulations. She stated that they looked at all sides of the house to determine the best location for an addition. The south side of the home is limited by the location of the septic tank and drain field and the west side is adjacent to a single family home with a wooded area providing privacy. They do not want to cut the trees down so they decided the best option for the least impact was on the east side.

Board Discussion

Paul Hoadley verified that there was no home on the east side and that if a 10' variance was granted that would leave a 5' setback on the east side.

Jordan asked what side of the house was the septic on. The applicant replied it was on the south side or rear of the house. The applicant also stated she has not been to the health department to see what would be necessary to move the septic.

Marilyn asked if they were planning on replacing the well as the addition will cover the existing well. The applicant stated that she has had discussions with well drillers and because it is under a screened in porch they may not have to move it but build an access door to it.

Marilyn stated that there is lots of room to the rear to build. The applicant stated they would still need a variance because the entire house is within the required 100' waterfront setback.

Scott verified that they have owned the house for 8 years. He asked where the applicant would move the well. He stated he disagreed with the well driller's assessment that you can build over an existing well. If you build over an existing well there is no way to service it or pull the pipe. The applicant stated that if they find out that they are not permitted to build over the well they are not interested in drilling a new well so they will not build over the current well. She stated they will research this.

Scott stated that the proposed 2nd floor study appears to be a bedroom. The applicant stated that it is meant to be the sitting room for the master suite. Scott stated that the health department may require a larger septic/drain field. Zoning Administrator Sullivan agreed with the statement regarding the septic/drain field.

Scott verified the dimensions of the previous variance. Scott asked if the proposed study as shown on the site plan was a roof or a dormer. He asked where the water runoff would be going. He stated that all runoff from a home/structure must remain on the site. This home is very close to the bluff with considerable water runoff and the potential to create erosion of the bluff. The applicant stated that some of the runoff could be contained with a gutter system.

Scott stated that safety, site service and water containment is the purpose of the side yard setbacks. He stated that historically Hayes Township has never granted a variance leaving such a small side yard setback. The Township has a long history of trying to preserve privacy in the 9 Mile Pt. subdivision between homes. The applicant stated she would entertain a lesser variance. Scott stated that the ZBA should always consider if a lesser variance better suites the request. Scott stated he looked at the floor plans and the plan could be reduced by approximately 3' on the side yard and limit the size of the overhang and still give the applicant needed space. Scott also noted the house does not have a basement.

Paul stated that if you put a 5' addition on the west side and a 5' addition on the east side and changed the roof angle the applicant would not exceed the side yard setback.

Marilyn asked if this could be done without cutting the trees. The applicant stated that they access the beach with a path on the west side and if they put

on an addition without removing the trees they would no longer have access to the beach area from the back yard.

Scott stated that the air conditioner unit and gas meter are within the proposed addition area and will need to be moved. He is still worried about the runoff.

Scott asked why it could not be closer to the road. The applicant replied that the living room and the master suite are on the lakeside.

Scott stated that if the addition was moved back 3' it would help with runoff on the slope.

Public comment closed

Vice- Chair Scott Parker read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving variances. The ZBA will consider one variance at a time and will begin with the 52 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback.

SECTION 8.07 VARIANCES

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area and/or zoning district, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship. **Scott Parker stated that he thought the request met this standard stating that the lot was created before zoning and that the house may also have been built before zoning.**

Marilyn stated that all the lots in the subdivision are small so it does not make this lot unique.

Paul stated that it conforms to the recorded plat and that the 65' lot is average in the neighborhood. They already have a home that meets the ordinance standard of minimum required so they do not meet this standard.

ZA, Sullivan stated that if someone came to him to build on the adjacent vacant lot they would not be allowed to build this close to the shore. They would be required to meet the current ordinance setbacks even though the lot was created before zoning. Larry stated that the current home is entirely within 100' front yard setback.

Marilyn stated that non-conforming homes may be maintained but not expanded on. This home is ok as it is.

Scott stated that the ZBA must give substantial justice.

The ZBA took a consensus vote on whether the application meets standard number 1.

Yays: Jordan Nystrom, Scott Parker

Nays: Paul Hoadley, Marilyn Morehead

Larry Sullivan explained that for a vote to pass it must be a majority of the total zoning board of appeals. The ZBA is a five member board with one member absent tonight. Because there is no board majority the consensus does not pass.

Vice-Chair Parker stated that because the ZBA voted no on number one there is no need to go over the rest of the standards because all the standards must be met.

The applicant asked if she could speak and Vice-Chair Parker stated that the public comment period was closed.

Paul Hoadley made a motion supported by Marilyn Morehead to deny the request for the 52 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback based on the corrected findings of fact as presented by the zoning administrator, and the need for the requested variance is not due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area and/or zoning district, such as narrowness, shallowness, shape, water, or topography.

Yays: Paul Hoadley, Jordan Nystrom, Marilyn Morehead,

Nays: Scott Parker

Motion carried and variance is denied.

Marilyn Morehead made a motion, supported by Jordan Nystrom to deny the request for a 10 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback. The need for a side yard variance is negated by the denial of the front yard setback variance because the whole house is within the 100' frontyard setback area.

Yays: Paul Hoadley, Jordan Nystrom, Marilyn Morehead.

Nays: Scott Parker

Motion carried and variance is denied.

The applicant stated that there are 34 houses in her subdivision and that 17 of those have been redone extensively. She encourages the Township to look at the past variances given. While she was not promised she would receive a variance she was lead to believe by the previous zoning administer that because of the history of variances in this area there was a possibility that she would receive a variance. She would like the Township to consider the time and money spent on variance requests before they give applicants a sense of expectation. She also stated that she believed that "substantial justice" meant that she could have a home that was consistent in value and quality as all the other houses in their area.

Marilyn Morehead stated that she is fairly new to the ZBA and was unaware that other variances had been given in the area. She stated she would have liked to have had that information. ZA Sullivan stated that a previous variance was given on this property and that was included in the ZBA information packets.

Paul Hoadley stated he has been trying for 15 years to have the ordinance followed more closely and that if an injustice is being done in the Michigan Shores Subdivision than that should be addressed in the zoning ordinance and not via the ZBA.

Scott Parker stated that the ZBA had discussed the need to address the many variances in the MI Shores Subdivision but was told by Marlene Golovich that it was expensive to amend the zoning ordinance and that the people should just have to pay for a variance.

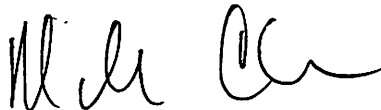
Marlene Golovich stated that she did make that statement but she also stated in the same conversation that the ZA should take a look at the subdivision and determine how many homes had already received a variance and how many others may potentially request a variance and determine if an amendment to the ordinance was necessary. This was never done.

Paul Hoadley made a motion, supported by Marilyn Morehead to recommend the Zoning Administrator review the files relating to Michigan Shores Subdivision and gather data to help the Planning Commission make a decision on potential zoning ordinance changes that may be needed in the Michigan Shores Subdivision. Motion carried unanimously.

Marilyn Morehead made a motion, supported by Jordan Nystrom to approve the minutes from January 19, 2016 as written. Motion carried unanimously.

Paul Hoadley made a motion, supported by Jordan Nystrom to adjourn this meeting at 9:04 p.m. Motion carried unanimously.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Marlene Golovich', written in a cursive style.

Marlene Golovich, Clerk
Hayes Township

Minutes approved as written May 17, 2016

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER**

Applicant: Vincent & Cheryl Zuellig
Hearing Date: April 27, 2016

The property identified by property tax number 15-007-400-049-00, located at 06069 Nine Mile Point Dr., Charlevoix, hereinafter referred to as the property

The Board having considered the application, a public hearing having been held on April 27, 2016 and after giving due notice as required by law, the Board having heard the statements of the applicants and the applicants representative, public comments and the Board having considered the following property information, exhibits, findings of fact as corrected and considering the criteria from Section 8.07 of the Hayes Township Zoning Ordinance:

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3. **Owners of Record: Vincent and Cheryl Zuellig**
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6. **Published Notice Yes**
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8. **Site Plan Yes**
9. **Photos Yes**
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FINDING OF FACT

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14. Existing setbacks: **Front approx.48', Rear approx 110', Side approx 20' west lot line**
Side ~~approx 16'~~ approx. 20' from east lot line.
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16. Previous variance(s) granted: **1986 60' variance from Section 5.13 Shoreland Protection Strip to Rodney Shackett (previous owner) to allow small addition to dwelling and replacement of deck on waterfront side of home.**
17. Variance request from Section **4.13 Side Yard Setbacks requesting 10' side yard variance to result in a 5' side yard setback on east side of property and Section 3.14 (2) (a) Waterfront Regulations front yard setback requesting a 52' variance from the front yard setback of the Zoning Ordinance to construct an addition .**
18. Unique features of property: **Legal Non-conforming parcel, lot not meeting minimum lot size (width and overall square footage), dwelling constructed on property prior to 100' setback requirement in ordinance (perhaps constructed prior to zoning) .**
19. Adjacent property: ~~**Parcel to the east contains single family home, parcel to the west vacant-Parcel to the east is vacant, parcel to the west contains single family home.**~~
20. % Impervious Surface Allowed **20%** Current **10%** Proposed **11.7%***_according to the applicant. My calculations reflect a Current % of 8.7% and a Proposed % of 11.8% These figures do not include the deck, stairs or pea stone parking area. Including the deck, stairs and driveway parking area results in a Current % of 21.3 and a Proposed % of 24.4*

The Board finds the need for the requested variance is not due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area and/or zoning district, such as narrowness, shallowness, shape, water, or topography

The Board finds the need for a side yard variance is negated by the denial of the front yard setback variance because the whole house is within the 100' frontyard setback area.

The Zoning Board of Appeals approves the findings from Section 8.07 of the Zoning Ordinance and the Board denies the request for a 52 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and the Board denies the request for a 10 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback.

Respectively Submitted

A handwritten signature in black ink, appearing to read 'M. Golovich', with a stylized, cursive script.

Marlene Golovich
Hayes Township Clerk

Minutes approved as written May 17, 2016

ZBA 4/27/16

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

A. Paul Handley
Jordan Nyström
Markus Jonhson
SCOTT PACKER

Mike Ch
Larry Sullivan