

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
August 20, 2014

The Zoning Board of Appeals hearing was called to order by Chair Scott Parker at 7:00 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Rich Burnett, Jim Rudolph, Bill Henne, Jordon Nystrom and Scott Parker. Joni Hosler was absent. Also present were Ron VanZee, ZA and Marlene Golovich, Secretary. Audience members were Ron Way, Eugene Smith, Linda Smith, Randy Johnson, Pam Johnson, Bob Stearns, and Liz Stearns.

Chair Scott Parker asked to be joined in the Pledge of Allegiance. Scott also asked the board members and audience to introduce themselves.

The purpose of the meeting is to hear a request by Don Tuckey for a thirteen (13) foot variance, from Section 3.14, Lakefront setback regulations, to add an addition to the existing home to provide a handicap accessible entry and a variance from Section 3.02 Non-Conformities of the Zoning Ordinance, at 08040 Indian Trails, Charlevoix, property tax number 15-007-119-024-15.

Chair Parker asked for the presentation from the applicant Bob Stearns, representative for the Tuckey family stated that the cabin was built in 1978 as a family cottage for summer use. Currently the home has an entrance on the north side of the house that they would like to put a small addition with a roof to accommodate handicap accessibility. A family member has MS and the current entrance makes it very difficult for him to use his scooter to enter the cabin. They hope to provide him with a covered entry to provide shelter from the rain and snow. The proposed addition would not be closer to the water than the current deck at that entrance. The home is located on a private drive and the addition will not impact the neighbors.

Chair Parker asked Ron VanZee, zoning administrator, for his facts of the case. Ron stated that the property was given a variance in 1995 so the Tuckeys could sell a small sliver of their property to a neighbor who had accidently built their home partially on the Tuckey property. Construction of the Tuckey cottage was in 1978 when there were no setbacks from the all-

time high water mark. The zoning changed in 1979 with a 25' set back from the all-time high water mark and currently the setback is 100'. The property is an R1 zone district and is approximately 5.43 acres and the **front of the** house is situated 81.2 feet from the all-time high water mark.

Chair Parker declared the public comment portion of the meeting open.

The Tuckey neighbors on the south are full time residents and their drain field is located on the Tuckey property via ~~and~~ an easement. They support this variance request.

Ron Way stated that the electric meter and gas connection are located on the rear of the house making it more difficult to put the entrance at the rear. It is difficult to move underground electrical. He also stated that the ramp will be of a portable nature and when not in use will be stored under the deck.

~~Scott Parker stated that a closet was located in that back corner and could be removed to allow the space necessary to create the entrance. Liz Stearns stated the entrance to the crawl space was located in that closet.~~

~~Scott Parker asked where the electrical pedestal for all the other property branches was located. The neighbor stated that there was no pedestal.~~

An unidentified audience member stated that MS is an issue and the needed ramp is a safety concern, they need the ramp.

Liz Stearns stated that her brother in law has MS and really enjoys his time at the cottage. The current deck makes it very difficult to get him in the house and get his scooter cleaned off before entering the main part of the home. This variance could alleviate that problem and make the cottage accessible for him.

Chair Parker closed the public comment period at 7:30 p.m.

Scott Parker stated that the existing deck is 6.5 x 10' and **that the deck top is marginally below the existing floor elevation, the existing deck meets ADA compliance for size. He stated that raising the deck to floor level, changing the door and providing a "barrier-free sill would put them in compliance and that their issue really lies w/bridging the gap between**

the rear of the house and the 100' setback line for the ramp to exist. ~~meets ADA compliance for size and height. He stated that changing the door and providing barrier free sills is all that would need to be done.~~

Ron VanZee stated that steps and ramps are exempt from setback rules.

Chair Parker stated, to the applicants, they had their problem solved and that they did not need a variance.

Bill Henne asked if MS was a hardship that could be consider in granting a variance. Jim Rudolph stated that in all the ZBA training he has attended the answer would be ~~no~~ NO.

Bill Henne stated that it is up to the board to determine if 13 feet is the minimum variance **that** is needed to allow the handicap entrance with ramp.

Chair Parker asked where the electrical pedestal (or terminal) for the subject house is located. The neighbor stated that there aren't any pedestals.

Ron VanZee stated to Chair Parker to ask the applicants if they would accept a lesser variance. The applicants did not answer.

Chair Parker stated that a closet was located in the back corner and asked what was in the closet, such as the electrical panel? Liz Stearns stated that the crawlspace access was in the closet. Bob Stearns stated that the electrical panel was located to the right of the closet (viewed from exterior). Chair Parker stated that there wasn't anything to prevent placing an entrance at the closet location.

Jim Rudolph stated that unless the Tuckeys can come back with a statement from the electric company that the power cannot be moved ~~than~~ **then** the minimum variance needed would be to put the entrance in the rear of the house.

Jim stated that the purpose of the 50 foot buffer strip on the lake front was to protect the quality of the lake that is why the 100 setback exists.

Chair Scott Parker read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving variances.

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. ***The cottage was built before the 100 foot setback. The existing deck was not on the original zoning permit and therefore also non-complying. A lesser variance could be granted if the entrance was moved to the rear of the cottage. The entire cottage is built within the current 100 foot setback.***

2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). ***It was not self-created, it was built before the 100 foot setback.***

3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for any permitted purpose, or will render conformity with those regulations unnecessarily burdensome. ***It would not be burdensome but less expensive to move the entrance to the rear. Cost is not a factor.***

4. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners. ***The minimum variance necessary would give relief.***

5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Zoning District. ***It would not cause an adverse impact.***

SECTION 8.08 CONDITIONS OF APPROVAL

The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in section 9.03 of this Ordinance.

Bill Henne made a motion, supported by Rich Burnett to a grant a seven (7) foot variance from Section 3.14, Lakefront setback regulations so the applicant may build a deck & ramp and enclosed room to the rear of the house from the NW corner of the house, south along the west wall. If the applicant can provide the zoning administrator with written and recorded (recorded prior to the date of this meeting) proof that an easement exists that prevents them from building in the rear of the house a variance of thirteen (13) feet would be granted for the project and location as indicated on the presented site plan. Applicants must present a new site plan for the seven (7) foot variance to the zoning administrator to be approved before a zoning permit can be issued.

Yeas: Rich Burnett, Jordan Nystrom, Bill Henne, Jim Rudolph

Nays: Scott Parker

Motions carried.

Jim Rudolph made a motion, supported by Rich Burnett to rescind the first motion granting a seven (7) foot variance.

Yeas: Rich Burnett, Jordan Nystrom, Bill Henne, Scott Parker, Jim Rudolph

Nays:

Motion carried unanimously.

Jim Rudolph made a motion, supported by Jordon Nystrom to grant a seven (7) foot variance from Section 3.14, Lakefront setback regulations so the applicant may build a deck & ramp and enclosed room to the rear of the house no closer to the water than the west rear wall of the existing house and extending no more than eight (8) feet to the north measured in the line along the west wall of the existing cottage and not to exceed a maximum width of twelve (12) feet. If the applicant can provide the zoning administrator with written and recorded (recorded prior to the date of this meeting) proof that an easement exists that prevents them from building in the rear of the house a variance of thirteen (13) feet would be granted for the project and location as indicated on the presented site plan. Applicants must present a new site plan for the seven (7) foot variance to the zoning administrator to be approved before a zoning permit can be issued.

Yeas: Rich Burnett, Jordan Nystrom, Bill Henne, Scott Parker, Jim Rudolph
Nays:

Motion carried unanimously.

Rich Burnett made a motion, supported by Jim Rudolph to approve the minutes from January 15, 2014 as written. Motion carried unanimously.

Bill Henne made a motion, supported by Jim Rudolph to adjourn this meeting at 9:10 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as corrected September 16, 2014.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: Don Tuckey
Hearing Date: August 20, 2014

The property identified by property tax number 15-07-119-024-15, located at, 08040 Indian Trails, Charlevoix, hereinafter referred to as the property

The Board having considered the application, a public hearing having been held on August 20, 2014 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 exhibits:

1. Application and all corresponding notification documents
2. Site Plan
3. Letters from neighbors

GENERAL FINDINGS OF FACT

The Board finds the parcel is zoned R-1

The board finds the parcel is approximately 5.43 acres

The Board finds there is a legal non-conforming cottage constructed on this lot.

The Board finds the cottage was constructed in 1978

The Board finds the zoning ordinance changed after 1978

The Board finds the cottage is 81.2 feet from the all-time high water mark

The Board finds a 25 foot variance was granted in 1995 from the required 200 foot minimum lot width

The Board finds there is a need for a handicap accessible entrance

The Board finds the difficulty was not created by an action of the applicant/owner.

The Board finds the variance will not alter the character of the surrounding area.

The Board finds the variance granted is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zone district

The Zoning Board of Appeals approves the findings from Section 8.07 of the Zoning Ordinance and the Board approves a variance request by Don Tuckey for a seven (7) foot variance from Section 3.14, Lakefront setback regulations so the applicant may build a deck & ramp and enclosed room to the rear of the house no closer to the water than the west rear wall of the existing house and extending no more than eight (8) feet to the north measured in the line along the west wall of the existing cottage and not to exceed a maximum width of twelve (12) feet. If the applicant can provide the zoning administrator with written and recorded (recorded prior to the date of this meeting) proof that an easement exists that prevents them from building in the rear of the house a variance of thirteen (13) feet would be granted for the project and location as indicated on the presented site plan. Applicants must present a new site plan for the seven (7) foot variance to the zoning administrator to be approved before a zoning permit can be issued.

Respectively Submitted

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

Marlene Golovich
Hayes Township Clerk

Minutes approved as corrected September 16, 2014.

8/20/14

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

Rich Burnett

Jordan Nystrom

Scott Parker

James Hudg

Bill Henne

Mike Ch

Ron VanZee