

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
January 6, 2010

The Zoning Board of Appeals hearing was called to order by Chair Joni Hosler at 7:30 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Joni Hosler, Rich Burnett, Doug Kuebler and Scott Parker. Also present were Jonathan Scheel, ZA and Marlene Golovich, Secretary. Audience members were Ron Way, Don & Bea MacGregor, Marty McCullough, and Karen & Ken Stolpmann.

The purpose of the meeting is to hear a request from Andy and Barb Wilson for a twenty seven (27) foot variance, from Section 3.14, Lakefront setback regulations and a four and one half (4 1/2) foot variance, from Section 4.13 Side Yard setback regulations of the Zoning Ordinance to build a master bedroom, bonus room and an attached garage to an existing structure at 6655 Nine Mile Pt. Drive, property tax number 15-007-400-025-00.

Zoning Administrator Jonathan Scheel stated the application was complete with the following exhibits;

1. Application and all corresponding notification documents
2. Survey map
3. Four drawings of proposed additions
4. Letter from Mr. Sieb (neighbor)

Ron Way, representative for the applicant stated that the septic drain field as shown on exhibit #3 is positioned so there is only a limited space to build a garage. He also stated that there is steep approach to the west for a driveway. The 4 1/2 foot side yard variance is needed for the owners to build a garage.

Scott Parker asked where the permit from the Health Dept was for the septic and drain field. Ron Way stated that he is not required to get a new permit because there is no increase in the number of bedrooms. Jonathan Scheel stated that he would require a letter from the Health Dept. stating the existing system was sufficient.

Scott Parker also noted that the existing house is non conforming on the west corner of the side yard setbacks as well as asking for a variance on the east side making it further nonconforming.

Rich Burnett asked how the owners will access their well located on the east side and towards the waterfront of their property with the limited access between the homes. Ron Way stated a service truck could gain access with the 10'6'' space between the homes. Rich stated that the ZBA very often requires tree planting between the homes or requires existing trees be left standing to help maintain privacy for neighboring property owners.

Ron Way asked Jonathan Scheel if there were existing trees between the homes now. Jonathan answered yes.

Doug Kuebler stated that access to the well would almost be impossible if the variance was granted. Doug asked if the lot width was 75' and Ron stated yes.

The ZBA discussed lot coverage for zone district R2 is 20% and Jonathan Scheel determined this home and proposed addition would be over the 20% limit by approximately 300 square feet.

Ron Way stated he could eliminate the rear deck and that would put the structure and impervious services under the 20% limit.

Don MacGregor stated that he no longer owned the adjoining property.

Correspondence from Mr. Seib (exhibit #4) was read by the ZBA.

Chair Hosler asked if there was any further public comment. At this time the public comment period was closed.

The ZBA decided to address the side yard setback variance first.

Chair Joni Hosler read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving 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:

- A. 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. **Rich Burnett stated that the only unique circumstance is the location of the septic tank and drain field. If you eliminated the garage there would be no need for a variance. Rich asked how far the building had to be from the septic and was told ten feet. Doug Kuebler stated that he would need more information on the location of the septic tank and field before he could make a decision. Jonathan Scheel stated that if the ZBA does not have enough information to make a decision that they can deny the variance or request more information. Ron Way stated he would locate the exact location and get this information to the ZBA. Scott Parker stated that this is an old septic system and needs review from the Health Dept. Ron Way stated that the size of the house does not concern the Health Dept. Rich Burnett stated that the problem is that asking for a variance is asking to break the law and the ZBA must make a determination on all information provided. If the garage can be moved and no variance is needed that would be the best outcome. Doug Kuebler asked if the property owners have considered a smaller garage. If they reduced the size they could potentially move two feet closer to the septic and reduce the size of the variance needed.**

Scott Parker made a motion, supported by Doug Kuebler to deny the variance for a four and one half (4 1/2) foot variance, from Section 4.13 Side Yard setback regulations of the Zoning Ordinance based on the lack of unique circumstances or physical conditions of the property involved, insufficient information on location of septic and drain field and the excess amount of lot coverage.

Roll Call:

Doug Kuebler	Yes
Rich Burnett	Yes
Scott Parker	Yes

Motion carried unanimously.

The ZBA then reviewed the criteria for the lakefront setback.

Chair Joni Hosler read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving 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:

- A. 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. **True. The lot is long and narrow and the existing home was built before the 100' set back was adopted.**
- B. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). **True. The Township changed the setback.**
- C. 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 a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. **True. The property is currently being used for residential purposes and changes in the setbacks makes it burdensome to enlarge the home.**

D. 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. **True. The proposed addition will be in line with other existing buildings in the area.**

E. 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. **True. It will not have an adverse impact but will increase the value.**

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 8.08 of this Ordinance.

Scott Parker made a motion, supported by Rich Burnett to approve a twenty seven (27) foot variance, from Section 3.14, Lakefront setback regulations with the following conditions per section 8:08 of the zoning ordinance:

1. The 20% lot coverage will be adhered to and maintained
2. The decks will never be enclosed
3. Deck size will not increase
4. A shoreland protection strip will be planted to conform to Section 3.14 of the zoning ordinance to accommodate the additional run off from impervious surfaces
5. A planting plan must be provided to the Zoning Administrator for approval
6. A Health Dept permit is obtained showing approval and location of existing septic tank and drain field.

7. The setback is to be measured from the farthest northwest corner of the new addition where it joins the existing home to the all time high watermark.
8. The new deck will be parallel with the existing deck (exhibit #3)

Roll Call:

Scott Parker	Yes
Rich Burnett	Yes
Doug Kuebler	Yes

Motion carried unanimously.

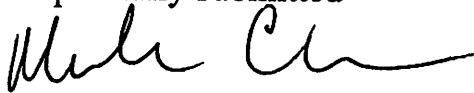
In other business the Zoning Board of Appeals elected officers.

Rich Burnett made a motion, supported by Doug Kuebler to nominate Joni Hosler as Chairman. Motion carried unanimously.

Doug Kuebler made a motion, supported by Rich Burnett to nominate Scott Parker as Vice Chairman. Motion carried unanimously.

Doug Kuebler made a motion, supported by Rich Burnett to adjourn at 9:20 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as written February 8, 2010

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: Andy & Barb Wilson
Hearing Date: January 6, 2010

The property identified by property tax number 15-007-400-025-00 located at 6655 Nine Mile Pt. Drive, Charlevoix hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on January 6, 2010 and after giving due notice as required by law, the Board having heard the statements of the applicants representative and the Board having considered the following exhibits:

1. A Zoning Application dated November 30, 2009
2. Survey Map
3. Four drawings of proposed addition
4. Letter from Mr. Sieb (neighbor)
5. A Notice of Hearing dated December 1, 2009
6. Publication in the Petoskey News Review December 10, 2009

GENERAL FINDINGS OF FACT

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

The Board finds there are no unique circumstances or physical conditions of the property involved for a side yard setback variance

The Board finds there is insufficient information on the location of the existing septic tank and drain field

The Board finds the proposed structure exceeds the 20% maximum lot coverage

The Zoning Board of Appeals approves the findings from Section 8.07 of the Zoning Ordinance and the Board denies a four & one half (4 1/2) foot variance, from Section 4.13 Side Yard setback regulations of the Zoning Ordinance to build a master bedroom, bonus room and an attached garage to

an existing structure at 6655 Nine Mile Pt. Drive, property tax number 15-007-400-025-00.

GENERAL FINDINGS OF FACT

The Board finds there is a legal non-conforming building constructed prior to the current one hundred (100) foot setback.

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 forty seven (47) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to build a garage and remodel the existing structure at 6655 Nine Mile Pt. Drive, property tax number 15-007-400-025-00 with the following conditions:

1. The 20% lot coverage will be adhered to and maintained
2. The decks will never be enclosed
3. Deck size will not increase
4. A shoreland protection strip will be planted to conform to Section 3.14 of the zoning ordinance to accommodate the additional run off from impervious surfaces
5. A planting plan must be provided to the Zoning Administrator for approval
6. A Health Dept permit is obtained showing approval and location of existing septic tank and drain field and provided to the Zoning Administrator
7. The setback is to be measured from the farthest northwest corner of the new addition where it joins the existing home to the all time high water mark.
9. The new deck will be parallel with the existing deck (exhibit #3)

Doug Kuebler made a motion, supported by Rich Burnett to adjourn at 9:20 p.m. Motion carried unanimously.

Respectively Submitted

A handwritten signature in black ink, appearing to read 'Marlene Golovich', with a long horizontal flourish extending to the right.

Marlene Golovich
Hayes Township Clerk

Minutes approved as written February 8, 2010.