

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
June 12, 2013

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

Members present were Rich Burnett, Jim Rudolph, Bill Henne and Scott Parker. Joni Hosler was absent. Also present were Jonathan Scheel, ZA and Marlene Golovich, Secretary. Audience members were Jan Kemme, David Kemme, Ron Way, Kent Hoffman and Sharon Hoffman.

Vice-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 David and Jan Kemme for a twenty one (21) foot variance, from Section 3.14, Lakefront setback regulations, to extend the existing deck on existing supports and add steps for emergency egress, and a six and one half (6.5) foot variance from Section 4.13 Schedule of Regulations for Zone District R2 of the Zoning Ordinance, at 07441 Nine Mile Point Drive, property tax number 15-07-400-006-00.

Ron Way, representative for the Kemmes, addressed Section 8.07 of the zoning ordinance, his comments are in bold.

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. **Ron stated the width of the narrow lot and the location of the well & septic dictate location for access to the garage. The variance needed for the deck is to allow an addition for ingress and egress from the deck to the lawn. The area is well screened with natural vegetation and will not impact the view from the water.**

2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). **Ron stated the need for the variance was not created by actions of the owners.**

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. **Ron stated the variance will give better access to the house.**

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. **Ron stated that the variance would give the Kemmes substantial relief for parking cars, access to their garage and access from the deck. Additionally the drainage issues will be addressed.**

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. **Ron stated that there will not be a negative impact and the improvements will increase property values.**

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

- 1. Application and all corresponding notification documents**
- 2. Site Plan**
- 3. Elevation Plan**
- 4. Photos depicting view of house from the beach area**
- 5. Future planting plans**
- 6. Letters from neighbors**

Zoning Administrator, Jonathan Scheel, stated the plan is accurate as shown. He also stated the 6.5 foot side yard variance was for a garage, fireplace chimney and an air conditioning unit. Jonathan received a call from a neighbor in support of the variance and several letters.

Vice-chair Parker read the letters received (see attached) regarding the variance.

Jonathan stated the septic is not new and is not being relocated. The new driveway put the lot coverage over the maximum allowed and the applicants are addressing this issue by installing permeable driveway material.

Dave Kemme stated they would address removing or repairing the culvert under the existing driveway. He is not sure it is broken as stated in the letter from Jim McMahon.

Dave also stated that the current deck is not large enough for a table and chairs and does not have an ingress/egress to the ground level which creates a safety issue. The proposed deck will be built on existing supports and will have a net zero impact.

Ron Way stated the location of the AC unit was determined by the existing mechanical at the corner of the house. The unit cannot be seen from the road.

Bill Henne stated that the ZBA may approve, deny or approve with conditions.

Bill Henne stated he was concerned about the location of the septic and drain field. Ron Way stated that the location of the drain field was only approximate. Bill stated that you need 10' between the house and the drain field. Bill asked if that could be a condition of the variance. Jonathan stated that the health dept and building codes will take care of the location of the septic and drain field. Rich Burnett asked if there would be an issue when you needed to have the septic pumped. Jonathan stated there would not as the hose from the pumper could reach the septic.

Rich asked how they will deal with the runoff from the roof to neighbor's property. Scott Parker stated that water must be dealt with on site and cannot run off to neighbors. Ron Way stated they could use gutters to address this problem.

Jim Rudolph stated he was opposed to giving a variance allowing the structure closer to the water. He stated there is very good data to support the 100 foot setback for lake water quality protection.

Rich asked if the proposed steps from the deck to the lawn could go towards the neighbors rather than towards the lake. Jonathan stated they would still need a variance as the house is already non-conforming.

Scott stated the overall height is 32 feet and that 30 feet is the height allowed. Jonathan stated the height is measured as an overall average.

Scott stated that the Kemme lot is narrower than the others and the front elevation is nice. He also stated the garage could be smaller or moved over in line with the house.

Mr Kemme stated he does not want a smaller garage. He needs space for two cars and a shop area. He also stated that the proposed driveway design is good and would have to be changed if the garage was moved. Jonathan stated that the turn radius would be too tight because of the drain field if you moved the garage but the garage could be made smaller.

Vice-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. **No. There are no unique circumstances or physical conditions that warrant this variance.**

Jim Rudolph made a motion, supported by Bill Henne to deny the request by Jan and David Kemme for a twenty one (21) foot variance, from Section 3.14, Lakefront setback regulations, to extend the existing deck on existing supports and add steps for emergency egress at 07441 Nine Mile Point Drive, property tax number 15-07-400-006-00.

Roll Call

Rich Burnett	Yes
Jim Rudolph	Yes
Scott Parker	Yes
Bill Henne	Yes

Motion carried.

Vice-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

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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. **Yes, this lot is narrower than others in the subdivision and the location of the drain field prohibits moving the garage.**
2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). **Yes, it is not self-created.**
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. **Yes, this home was purchased as a summer home and now the applicant wishes to use it year round. As a summer home a garage was not a necessity but year round it is.**

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. **Yes**

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. **Yes, the overhang and the chimney are not an adverse impact but the air conditioner noise does impact the neighbors in a reduced setback.**

Ron Way stated that the noise could be reduced with some type of sound barrier. Dave Kemme stated that it seemed unreasonable to not allow the air conditioner. The neighbors built closer to the Kemmes lot and now the Kemmes are being punished for the variance given to the neighbor. It is that neighbor who opposed the air conditioner.

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.

Jim Rudolph made a motion, supported by Bill Henne to approve the request by Jan and David Kemme for a six and one half (6.5) foot variance from 4.13 Schedule of Regulations for Zone District R2 of the Zoning Ordinance, at 07441 Nine Mile Point Drive, property tax number 15-07-400-006-00 with the following conditions.

1. The foundation is to be no closer than 10 feet to the side yard lot line as shown on the site plan **allowing for an eave overhang of up to eighteen inches.**
2. Lot coverage is not to exceed twenty (20) percent of the entire lot as allowed by the zoning ordinance.
3. A gutter system must be in place to prohibit runoff onto neighbor's property and to prevent unfiltered runoff into the lake.
4. The proposed air conditioner unit may not be in the side yard setback as shown on the site plan.
5. Remove old driveway and culvert and create proper ditching to accommodate water flow.

Roll Call

Scott Parker	Yes
Rich Burnett	Yes
Jim Rudolph	Yes
Bill Henne	Yes

Motion carried.

Jim Rudolph made a motion, supported by Rich Burnett to approve the minutes from April 8, 2013 as corrected. Motion carried unanimously.

Jim Rudolph made a motion, supported by Scott Parker to adjourn this meeting at 9:37 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as corrected July 31, 2013

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: David and Jan Kemme
Hearing Date: June 12, 2013

The property identified by property tax number 15-07-400-006-00, located at, 07441 Nine Mile Point Drive Charlevoix, hereinafter referred to as the property

The Board having considered the application, a public hearing having been held on June 12, 2013 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. Elevation Plan
4. Photos depicting view of house from the beach area
5. Future planting plans
6. Letters from neighbors

GENERAL FINDINGS OF FACT

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

The Board finds the lot is narrower than surrounding lots.

The Board finds there is a need for a garage.

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 the request by David and Jan

Kemme for a six and one half (6.5) foot variance from 4.13 Schedule of Regulations for Zone District R2 of the Zoning Ordinance, at 07441 Nine Mile Point Drive, property tax number 15-07-400-006-00 with the following conditions.

1. The foundation is to be no closer than 10 feet to the side yard **lot line** as shown on the site plan **allowing for an eave overhang of up to eighteen inches.**
2. Lot coverage is not to exceed twenty (20) percent of the entire lot as allowed by the zoning ordinance.
3. A gutter system must be in place to prohibit runoff onto neighbor's property and to prevent unfiltered runoff into the lake.
4. The proposed air conditioner unit may not be in the side yard setback as shown on the site plan.
5. Remove old driveway and culvert and create proper ditching to accommodate water flow.

Respectively Submitted



Marlene Golovich
Hayes Township Clerk

Minutes approved as corrected July 31, 2013

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: David and Jan Kemme
Hearing Date: June 12, 2013

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1. Application and all corresponding notification documents
2. Site Plan
3. Elevation Plan
4. Photos depicting view of house from the beach area
5. Future planting plans
6. Letters from neighbors

GENERAL FINDINGS OF FACT

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

The Board finds the need for the requested variance is not due to unique circumstances or physical conditions of the property involved.

The Zoning Board of Appeals approves the findings from Section 8.07 of the Zoning Ordinance and the Board denies the request by David and Jan Kemme for a twenty one (21) foot variance, from Section 3.14, Lakefront setback regulations, to extend the existing deck on existing supports and add steps for emergency egress at 07441 Nine Mile Point Drive, property tax number 15-07-400-006-00.

Respectively Submitted

A handwritten signature in black ink, appearing to read "Marlene Golovich". The signature is fluid and cursive, with the first name "Marlene" written in a larger, more prominent script than the last name "Golovich".

Marlene Golovich
Hayes Township Clerk

Minutes approved as corrected July 31, 2013

To: Hayes Township Zoning Board of Appeals
Re: Kemme Cottage Project
From: Janice and Jeff Whipple
Residents, Michigan Shores Subdivision
Date: June 10, 2013

Janice Whipple, Jeff Whipple
6/11/2013

Our neighbors, David and Jan Kemme, have shared with us their drawings to explain their desire and plan to remodel their cottage to a year-round home. We believe their plan will benefit the entire neighborhood, will be a positive addition to the natural setting the members of our association strive to establish, is in line with similar projects that have been approved for other members of our association and will benefit the Township through increased revenue due to the revised SEV and higher tax base.

As to their proposed and needed variance requests, along with our fellow association members are well aware of the variances given to their next door neighbors, the McMahons. The Kemme Plan is very similar to what was done to the property next door and given existing Past Precedence on the part of the Zoning Board of Appeals to other projects, we feel that the Kemmes deserve the same considerations.

In reviewing the Kemme Plan in regards to section 8:07 of the Hayes Township Zoning Ordinance:

1. Due to the need for variances to properly complete their project and
2. This need is not the result of the current or past owners and
3. Strict compliance would restrict the owners from creating a year-round home that would adequately meet their needs and
4. Lesser variances would not give them needed relief or consistency with their neighbor next door and/or other similar projects in Michigan Shores and
5. Would not cause negative impact upon any neighbors or other members of our neighborhood,

we request that the Zoning Board of Appeals consider our support of the Kemme's project and any other similar projects by approving their needed variance requests.

To: JONATHAN SCHEEL AND MARLENE GOLOVICH

HAYES TOWNSHIP ZONING ADMINISTRATOR
AND HAYES TOWNSHIP CLERK

FAX: 231-237-0046 3 PAGES INCLUDING COVER

FROM: JIM AND DIANE McMAHON

LOT #7, MICHIGAN SHORES SUBDIVISION

7377 NINE MILE POINT DRIVE

CHARLEVOIX, MI 49720

EMAIL: jim_mcmahon_iii@yahoo.com

CELL: 231-330-8787 (NOT ALWAYS TURNED ON)

CALL: 231-330-6619 (ONLY ACTIVE WHEN DRIVING)

SINCE WE ARE TRAVELING IN REMOTE AREAS OF
ALASKA, THERE MAY BE DELAYS IN OUR RESPONSE.

DEAR JONATHAN AND MARLENE,

ATTACHED IS A 2-PAGE LETTER THAT DESCRIBES OUR
CONCERNS RELATING TO THE HOME CONSTRUCTION ON LOT #6,
MICHIGAN SHORES SUBDIVISION. WE WOULD VERY MUCH
APPRECIATE THE ZBA ADDRESSING THESE ISSUES AT THEIR
JUNE 12, 2013, MEETING.

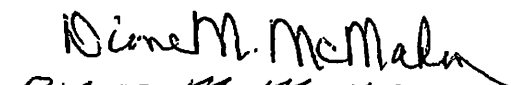
QUESTION: WILL THE COUNTY HEALTH DEPARTMENT ADDRESS
THE PROXIMITY OF THE LOT #6 SEPTIC TANK TO THE SIDE LOT
LINE?

PERMISSION: PLEASE USE THIS FAX AS OUR PERMISSION
FOR ANY HAYES TOWNSHIP ZBA MEMBER OR HAYES TOWNSHIP
OFFICIAL OR ANY APPROPRIATE CHARLEVOIX COUNTY OFFICIAL
TO WALK ONTO OUR PROPERTY (LOT #7) TO GATHER INFORMATION,
TAKE MEASUREMENTS, AND TAKE PHOTOGRAPHS AS RELATED TO
ZBA DECISIONS AND ZONING DECISIONS FOR LOT #6, THE
ADJACENT PROPERTY.

VERY TRULY YOURS,


JAMES P. McMAHON

MAY 28, 2013


DIANE M. McMAHON

P.S. PLEASE EMAIL ME CONFIRMATION OF RECEIPT. THANK YOU.

June , 2013

Dear Hayes Township Members of the ZBA and the Zoning Administrator,

Diane and I are on a 12-week driving/camping trip throughout Alaska. We are unable to attend the ZBA meeting on June 12 regarding the zoning variances for Lot # 6, Michigan Shores Subdivision, requested by Dave and Jan Kemme. We are Dave and Jan Kemme's neighbors. Lot # 6 is west of and adjacent to our property, Lot # 7; we share the same north/south property line.

We generally agree with the Kemme plans, except for the items that are described below. We especially like the relocation of their driveway to the western side of their lot. This driveway relocation provides an opportunity for the resolution of the broken culvert (drain) and elevated driveway issues. In conversation this past summer with Dave Kemme regarding the culvert issue, he mentioned to me that this situation may be addressed with the new construction on their home addition.

I. The drain issue involves the original, steel culvert that is buried at the base of the road ditch (drain) under their existing, elevated driveway. The culvert and elevated driveway were installed by the 1st property owner of Lot # 6. Diane and I are hoping that the ZBA will require the old, steel culvert to be removed. We are also asking that both the ditch and the elevated driveway be restored to the original contour of the ground. Here are some facts relating to this steel culvert and elevated driveway:

- a. This steel culvert has a smaller diameter than what is acceptable today by the Charlevoix Road Commission.
- b. This steel culvert is broken in its center which allows sand and dirt to fall down into the steel culvert, thereby impeding the potential flow of water through it. On occasion, this broken culvert has had to be cleaned of the sand and dirt that have fallen through the break.
- c. The natural water flow of the road ditch was constructed years ago when Michigan Shores Subdivision was platted in the 1960's. At this location along the northern side of Nine Mile Point Drive, this common drain flows from east to west; i.e., it flows westward through Lot # 7 (McMahon's property) to Lot # 6 (Kemme's property).
- d. The steel culvert encroaches about 18-24 inches onto Lot # 7.
- e. The existing elevated driveway is about 18 inches higher than the natural contour of the nearby ground on both Lots # 6 and # 7.
- f. The eastern, top-side edge of the elevated driveway overlaps onto the adjacent property line with Lot # 7 and slopes off onto Lot # 7.

We respectfully request that the ZBA require this old, existing steel culvert be removed and both the drain (ditch) and elevated driveway be restored to their original contours as a condition of granting a variance. Suggestion: This existing driveway is in close proximity to the existing drain field and, therefore, the vacated driveway could also be used as a possible location for the new septic tank. If this request is not granted, then at the very minimum, we ask that the old, steel

culvert be replaced with an approved steel culvert that does not encroach beyond our mutual property line.

II. It appears from the zoning application drawings that a new septic tank is being installed, closer to our mutual side property line. Our understanding is that the original septic tank is currently located close to the home's foundation. As mentioned earlier, a new septic tank could be located nearer to the existing drain field, even taking some of the space that would be vacated by the existing (older) driveway. We respectfully request that a different, septic-tank solution be developed where it would not be moved closer to the side property line and our home.

III. Regarding the placement of the A/C unit on the eastern side of the home, can this A/C unit be placed somewhere else, such as the western side or the northwestern open building corner of the new addition where spacing between the homes is much greater and there are more natural barriers (between Lots # 5 and # 6)? We are concerned about the noise that a large A/C unit would emit between the homes that are relatively close together. In any case, we request that the A/C unit be screened with a sound barrier to significantly reduce emitted noise.

IV. Dave and Jan Kemme have a large, wheeled, trash receptacle that is located outside (since they currently have no storage space for it). Since a garage is being added to their home, we ask that this trash receptacle be stored inside the garage rather than located outside between the homes.

Comments: David Kemme did send a letter of objection regarding the McMahon request for variances in 1999/2000. At that time, Jim McMahon did speak with him by phone regarding his objections. Our understanding is that he decided to leave his written correspondence stand as is. It appears that Dave Kemme's letter of objection seems to contradict some statements made in the 2013 Kemme application for variance requests. Additionally, some zoning application statements, in conjunction with the drawing that depicts the footprint of our home, could be somewhat misleading, such as:

- a. Our home's westerly foundation is actually 10.7 to 11.8 feet away from the side lot line. The remainder of the variance is for eaves, gutter, and casement window out swing.
- b. Our home's lake ward, northwestern foundation extension is actually 4 feet. The remainder of the variance is for a 2-foot, second-floor cantilever, gable eaves, and casement window out swing.

We respectfully ask that you consider our requests for building plan changes when approving any variance requests. We seek the ZBA's resolutions to these issues. Thank you very much.

If you wish to reach us during our travel through Alaska, we have provided our cell phone numbers and email address to Marlene Golovich and Jonathan Scheel. Thank you.

Jim and Diane McMahon
7377 Nine Mile Point Drive
Charlevoix, MI 49720

James P. McMahon
05-28-2013

Diane M. McMahon
05-28-2013

May 30, 2013

To:

Hayes Township Zoning Board of Appeals

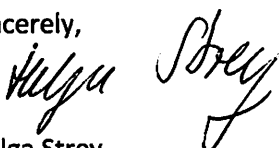
09195 Old US 31 N

Charlevoix, MI 49720

Dear Zoning Board Members:

I am writing in regard to the variance requested by David and Jan Kemme. Due to another commitment on June 12, I will not be able to attend but I wanted to write in support of the Kemme's request. I have seen their building plans which are very nice. I am sure these proposed improvements will have a positive impact on the neighborhood as have other similar home improvement projects on Nine Mile Point Dr.

Sincerely,



Helga Strey

07333 Nine Mile Point Dr

Hayes Township

Zoning Board of Appeals

09195 Old US 31 N

Charlevoix, MI 49720

To Whom It May Concern,

I am writing in support of the request by David and Jan Kimme, 07441 9 mile pointe drive, seeking variances to sections 3.14 and 4.13 of the Zoning ordinance.

I believe these variances will enhance the neighborhood and allow redevelopment of an older property in a manner consistent with the surrounding and adjacent properties. The neighborhood established in the early 60's is changing from a vacation cottage development into a full time residential area.

Significant investment in the neighborhood should be protected by allowing this redevelopment. These older cottages were built before the zoning plans in effect today were envisioned and as such require some flexibility in the application of the ordinance to foster the betterment of the township property values. The township has demonstrated a pattern of allowing variances in this neighborhood and the requests made seems to be consistent with those previously granted.

Thank you for your consideration in this matter,



Roy Griffitts

07203 9 Mile Pointe Dr.

Charlevoix, Mi 49720

Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

Date: May 28, 2013

To: Jonathon Scheel
Zoning Administrator
09195 Old US 31 North
Charlevoix, MI 49720

Re: Tax #15-07-400-006-00

To whom it may concern:

Upon reviewing the above Notice of Public Hearing of Appeals, I would like to express my support with the above request of the owner. Haggard's Plumbing & Heating is not at all opposed to the changes of their property and/or the request to the Zoning Board. If a property owner is fortunate enough to have the ability and the resources in this time of economical struggles to either build and/or improve their existing property, we would like to see their request granted. It would prove positive for the local, county, state and country to do all we can to improve and promote growth in any way possible.

Sincerely,

Haggard's Plumbing & Heating

ZBA

6/12/13

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

Rich Bunt

Jim m. Dudge

Bill Henne

Scott Parker

Mike Ch

Jonathan Schell