

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
May 25, 2016

The Zoning Board of Appeals hearing was called to order by Chair Bill Henne at 7:02 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Paul Hoadley, Jordan Nystrom, Marilyn Morehead, Bill Henne, and Tom Darnton. Also present were Larry Sullivan, ZA, Marlene Golovich, Secretary, Bryan Graham, Township Attorney, Stephanie Baldwin, representative for the applicant and Mr Cullen.

Chair Bill Henne asked to be joined in the Pledge of Allegiance.

The ZBA members introduced themselves.

Chair Bill Henne reviewed the Order of Business and stated the purpose of the meeting is to hear a request by Doug Quada & Kathy Keljo for a 60 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a 4.2 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback to build an addition to an existing home, and a 8 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a 5 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback to build a garage at 07125 Nine Mile Point Dr., Charlevoix, property tax number 15-007-400-013-00.

Zoning Administrator Larry Sullivan presented the following information;

PROPERTY INFORMATION:

- 1. Property Tax Identification Number: 15-007- 400 - 013 - 00**
- 2. Property Address: 07125 Nine Mile Point Drive**
- 3. Owners of Record: Doug Quada & Kathy Keljo**
- 4. Application for Variances - Received on April 13, 2016 for a 60 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a 4.2 foot variance, from Section 4.13 Schedule of Regulations**

for a side yard setback and a 8 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a 5 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. Hayes Township Ordinance, effective January 28, 2016
11. Section 3.02 of the prior zoning ordinance, effective October 31, 2009
12. Zoning Administrators comments
13. May 10, 2016 correspondence from John Haggard
14. May 16, 2016 correspondence from Thomas E. Stout

FINDING OF FACT

15. Zoning District: *R2* Minimum lot size: *3/4 acre 120' lot width*
16. Lot Dimensions: *78x202'*. Total lot acres, *.36*.
17. Setback requirements: Front 100' from Ordinary High Water Mark, Rear 25', Side 15'.
18. Existing setbacks: Front *approx.56'*, Rear *approx 82'*, Side *approx 10.8' west lot line*
Side approx 15' from east lot line.
19. Existing non-conformities: *Lot size, front yard setback, west sideyard setback*
20. Residence was constructed in 1978 and 1980
21. The existing home is one story with a one car attached garage.
22. The existing home is approximately 1,100 sq. ft. plus 400 sq. ft. of garage area meeting the minimum square footage of the R-2 Zone district
23. Setbacks at the time of construction were 50' from Ordinary High Water Mark and 15' from side lot line.
24. The home is located within the 100' setback from the ordinary high water mark.
25. The majority of the attached garage is located within the 100' setback from the ordinary high water mark.
26. The proposed addition will be almost entirely within the 100' setback from the ordinary high water mark.

27. % Impervious Surface Allowed 20% Current 19.1%

28. On January 11, 2016 the Hayes Township Zoning Ordinance was amended to include Sections 3.02, 9 and Section 3.02, 10.

Zoning Administrator Presentation

Larry read his findings of fact as presented. Larry also read section 3.02 Nonconformities 9 and 10 of the Hayes Township zoning ordinance.

9. A nonconforming building or structure, whose nonconformity is not related to the waterfront regulations of this Ordinance, may be enlarged or altered, provided that such enlargement or alteration does not increase the degree or extent of the nonconformity of such structure.

10. A nonconforming building or structure, whose nonconformity is related to the waterfront regulations, must obtain ZBA approval in order to enlarge or alter the structure and shall only be permitted in a manner that does not increase the degree or extent of the nonconformity. The ZBA may impose conditions at the time of approval that would lessen the impact or partially mitigate the impact of the nonconformity on the water quality.

Applicant Presentation

~~Stephanie Baldwin, representative for the applicant, stated that the building envelope is where the drain field is and the drain field cannot be moved.~~ Stephanie Baldwin, representative for the applicant, stated that the building envelope is where it is because there is only one place on the lot where the drain field can be located; the location of the remaining elements of the design follows logically from that fact.

Currently the home is a single story structure and the applicant wants to add a second story and a covered porch. They also want to build a two car detached garage. They will be adding foundation to attach the u-shaped buildings and screening in the waterfront deck. She stated the applicant will need to enlarge the drain field to accommodate 4 bedrooms and have spoken with the Charlevoix County Health Dept. The drainfield expansion will move toward the road. Stephanie believes the hardship for her clients is because of ordinance changes and the size of the existing lots in this subdivision. She stated that the applicants need the 5' side yard setback variance to accommodate the drainfield and walkway. The garage is approximately 9' from the drainfield.

Stephanie stated that the applicant wishes to be a full time resident within the next two years.

Marilyn Morehead asked how they planned to service their well if needed. Stephanie responded that they have 10 feet by the garage and have obtained permission from the current neighbor to access the well from their property.

Marilyn also stated that covering the deck it will no longer be permeable and will change the percentage of lot coverage. Stephanie stated that if she has to include the driveway in the lot coverage equation that the plan will exceed the allowed lot coverage. Marilyn stated that the driveway must be included in the equation.

Bill Henne asked how the applicant determined the location of the drainfield. Stephanie responded that the applicant had to dig it up because they were having problems with it.

Public Comments

Mr. Cullen, a neighbor stated he did not object to the variance but would like the ZBA to require a planting of large trees, 10 foot or taller, between the two homes to ensure his privacy. The board also received two letters of support from John Haggard and Thomas Stout.

Public comment closed

Board Discussion

Bryan Graham, attorney for Hayes Township, stated that there was an amendment to Section 3.02 Nonconformities in January 2016 adding number 9 and 10. The amendment limits the power of the ZBA. They have no legal authority to approve an enlargement of a non-conforming building if the enlargement would increase the degree or extent of the non-conformity.

Marilyn Morehead made a motion, supported by Paul Hoadley to deny the request for a variance from Section 3.14, a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback and a variance from Section 4.13 Schedule of Regulations for a side yard setback to build a second floor addition and enclose a porch to an existing home based on the findings of fact and based on Section 3.02 Nonconformities, 10.

Yays: Paul Hoadley, Jordan Nystrom, Tom Darnton, Marilyn Morehead, Bill Henne

Nays:
Motion carried.

Chair Bill Henne read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving variances. The variance being considered is for a 8 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback to build a garage .

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. **Bill Henne stated that he did not believe that the lot was unique because all the lots in the subdivision are about the same size and that a garage is not a necessity. Bryan Graham explained that there are unique circumstances because it is a very small lot and that a garage is allowed by right as an accessory building. Bryan also stated that the uniqueness is not compared just within the subdivision but all lots in the township within that zoning classification. It is also unique because of the location of the drainfield, this dictates the location of the garage.**

During the Boards deliberation on standard #2 Bryan Graham asked Stephanie, applicants representative, why the garage was placed in the proposed location. Stephanie answered because that is where the client wanted it.

2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). **The applicant could move the proposed two car garage back towards the road eliminating the need for a front yard variance.**

Marilyn Morehead made a motion, supported by Jordan Nystrom to deny the request for a variance from Section 3.14, a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback based on the findings of fact and Section 8.07, 2, since the need for the variance from the waterfront setback was the result of a self-created hardship.

Yays: Paul Hoadley, Jordan Nystrom, Tom Darnton, Marilyn Morehead, Bill Henne

Nays:

Motion carried.

Chair Bill Henne read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving variances. The variance being considered is a 5 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback to build a garage.

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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. **The property is unique because it is a very small lot and the location of the drainfield dictates the location of 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). **The need is not self-created. The applicant did not create the lot size or the location of the drainfield.**
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. **Northern Michigan weather makes it reasonable to need a two car garage.**

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 variance would give the applicant substantial justice.**
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. **There is no evidence the granting of the variance will be harmful.**

Tom Darnton made a motion, supported by Marilyn Morehead to grant a 5 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback to build a garage based on the findings of fact.

Yays: Bill Henne, Marilyn Morehead, Tom Darnton, Jordan Nystrom, Paul Hoadley

Nays:

Motion carried.

The applicant must present revised plans to the zoning administrator showing the garage moved back before a zoning permit can be granted.

Paul Hoadley made a motion, supported by Marilyn Morehead to nominate Tom Darnton as Vice-Chair of the ZBA. Motion carried unanimously.

Paul Hoadley made a motion, supported by Jordan Nystrom to adjourn this meeting at 8:33 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as corrected June 3, 2016

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

Applicant: Doug Quada and Kathy Keljo
Hearing Date: May 25, 2016

The property identified by property tax number 15-007-400-013-00, located at 07125 Nine Mile Point Dr., Charlevoix, hereinafter referred to as the property

The Board having considered the application, a public hearing having been held on May 25, 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 and considering the criteria from Section 8.07 of the Hayes Township Zoning Ordinance:

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EXHIBITS

5. **Application Yes**
6. **Published Notice Yes**
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8. **Site Plan Yes**
9. **Photos Yes**

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12. Zoning Administrators comments
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FINDING OF FACT

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Side approx 15' from east lot line.
19. Existing non-conformities: Lot size, front yard setback, west sideyard setback
20. Residence was constructed in 1978 and 1980
21. The existing home is one story with a one car attached garage.
22. The existing home is approximately 1,100 sq. ft. plus 400 sq. ft. of garage area meeting the minimum square footage of the R-2 Zone district
23. Setbacks at the time of construction were 50' from Ordinary High Water Mark and 15' from side lot line.
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26. The proposed addition will be almost entirely within the 100' setback from the ordinary high water mark.
27. % Impervious Surface Allowed 20% Current 19.1%
28. On January 11, 2016 the Hayes Township Zoning Ordinance was amended to include Sections 3.02, 9 and Section 3.02, 10.

The Board finds they have no legal authority to approve an enlargement to a non-conforming building that increase degree or extent of the non-conformity based on Section 3.02, 10 of the Hayes Township Zoning Ordinance.

The Board finds the lot is unique because of its size and the location of the drainfield. The Board finds that a garage/accessory building is a use by right.

The Board finds the applicant could consider a one car garage and would eliminate the need for any variance. The Board finds the proposed two car garage could be moved back eliminating the front yard variance. The Board denies the request for a 8 foot variance, from Section 3.14,2,a, Waterfront Regulations and Section 4.13 Schedule of Regulations for a front yard setback.

The Board finds the property is unique because of its size and location of the drainfield. The Board finds the need for a variance is not self-created. The Board finds that Northern Michigan weather makes it reasonable to need a two car garage. The Board finds the variance would give the applicant substantial justice. The Board finds there is no evidence that the granting of the variance will be harmful. The Board approves the findings of fact and the findings from Section 8.07 of the Zoning Ordinance and grants a 5 foot variance, from Section 4.13 Schedule of Regulations for a side yard setback to build a garage at 07125 Nine Mile Point Dr., Charlevoix, and property tax number 15-007-400-013-00.

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 June 3, 2016

ZBA

5/25/16

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

A. Paul Hoadley

Jordan Nystrom

Don Dant

Marlene Morehead

Bill Herme

Ray Sullivan

Mike Ch