

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
October 17, 2012

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, Doug Kuebler, Bill Henne and Scott Parker. Joni Hosler was absent. Also present were Jonathan Scheel, ZA and Marlene Golovich, Secretary. Audience members were Jodi Alger Bergmann, Ethel Knepp, Randy Price and Veronica Lear.

The purpose of the meeting is to hear a request by Jeff and Veronica Lear for an eight (8) foot side yard variance, from Section 4.13 Schedule of Regulations and a fourteen (14) foot lake front variance, from Section 3.14 Lakefront Regulations of the Zoning Ordinance to construct a deck and covered porch at 07215 Birdland Dr., Charlevoix, property tax number 15-007-301-011-00.

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

1. Application and all corresponding notification documents
2. Site Plan

Jodi Bergmann, representative for the applicant, stated that the proposed plan for the remodel called for leveling the floor and adding a wraparound porch. She also stated the current home is ugly and needs updating. They also plan on dealing with current drainage problems. She read excerpts from neighbor's letters of supports (copies were asked for, none provided). Jodi also stated the porch would provide shade for the home.

Jonathan Scheel, Zoning Administrator, stated the house was built in 1991 and currently has a Non-permitted, non-conforming 10 foot deck on the front of the house. The neighbor to the north received a 15 foot front yard variance in 2000. The neighbor to the south received a 7 foot side yard variance.

Bill Henne asked if the deck was on the original plan in 1991. Jonathan stated it was penciled in but no permit was issued for the deck. In addition to

that, the house was built closer to the water than originally shown on the 1991 plan.

Doug Kuebler asked how far the home on the north is from the high water mark. Jonathan stated it is 85 feet from the high water mark. They were granted a 15 foot variance in 2000.

Scott Parker stated the existing deck was built after the fact in 1991 and the front yard was fully treed and complied with the shoreland protection strip. Currently it does not comply.

Jonathan asked if the whole remodel plan could be moved back and then they would not need a front yard variance. The applicant did not respond.

Scott Parker asked if the porch and the deck addition would put them over the 15% lot coverage in the R1 zone district. Jonathan replied that it did meet the lot coverage. He also asked if the plan complied with the height restriction in the waterfront zone district. The plan shows a tower with a height of 31'6". ZA Scheels will review the elevation plan during the permit process.

The board decided to consider each variance separately starting with the side yard setback.

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 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. **This lot is unique because it is 95 feet wide and all new lots would have to be 200 feet wide**

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 created by the owner.**
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 a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. **The property can be used without the variance.**
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. **A lesser variance of 2.5 feet would grant relief to the property owners.**
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. **A lesser variance would not create an adverse impact on surrounding properties.**

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.

Doug Kuebler made a motion, supported by Rich Burnett to approve a 2.5 foot side yard variance, from Section 4.13 Schedule of Regulations based on the findings of facts and with the following conditions:

1. Prepare and implement a drainage plan for surface water runoff
2. Prepare and implement a shoreland protection strip restoration plan

Roll Call

Doug Kuebler	Yes
Rich Burnett	Yes
Bill Henne	Yes
Scott Parker	Yes

Motion carried.

Randy Price stated that the existing home is set back further than the adjacent neighbors.

Jodi Bergmann asked if they could enclose the existing non-conforming deck. No, it would require a variance.

Doug Kuebler asked if the Township had proof the front yard is wetlands. Jonathan stated that there is a DEQ letter on file stating it is wetlands.

Scott Parker stated that the DEQ would require them to have a permit. He also asked if the shoreland protection strip could be restored without a DEQ permit. Jonathan Scheel will get clarification from the DEQ before the zoning permit or the restoration permit is issued.

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 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. **There is no hardship.**

Bill Henne made a motion to deny the request for a fourteen (14) foot lake front variance, from Section 3.14 Lakefront Regulations based on the findings of fact. Motion failed for lack of support.

Doug Kuebler stated that they should be able to use the existing deck, stating that no one knew about it so why does it bother us now.

Bill Henne stated that the Board needs to stick to the criteria.

Doug stated it is an existing deck.

Bill Henne made a motion, supported by Rich Burnett to approve a 10 foot lake front variance, from Section 3.14 Lakefront Regulations for the existing non-conforming 10 foot deck with the following conditions:

1. The existing deck cannot be enlarged in width or length
2. The existing deck cannot be covered or enclosed
3. The existing deck must remain an open deck

Roll Call

Scott Parker	Yes
Bill Henne	Yes
Rich Burnett	Yes
Doug Kuebler	Yes

Motion carried.

Rich Burnett made a motion, supported by Bill Henne to approve the minutes from July 9, 2012 as written. Motion carried unanimously.

Doug Kuebler made a motion, supported by Scott Parker to adjourn this meeting at 9:35 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as written January 9, 2013

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

Applicant: Jeff and Veronica Lear
Hearing Date: October 17, 2012

The property identified by property tax number, 115-007-301-011-00 located at, 07215 Birdland Dr., Charlevoix, hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on October 17, 2012 and after giving due notice as required by law, the Board having heard the statements of the applicants representative, public comments and the Board having considered the following exhibits:

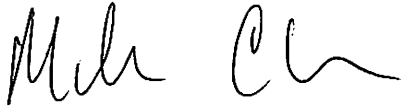
1. Application and all corresponding notification documents
2. Site Plan

GENERAL FINDINGS OF FACT

- The Board finds the lot is 95 feet in width and current lots in the same zone district are 200 feet.
- The Board finds a hardship was not created by the owner
- The Board finds the property could be used with a lesser variance
- The Board finds a lesser variance will not adversely impact the surrounding properties

The Zoning Board of Appeals approves the findings from Section 8.07 of the Zoning Ordinance and the Board approves a 2.5 foot side yard variance, from Section 4.13 Schedule of Regulations with the following conditions, prepare and implement a drainage plan for surface water runoff and prepare and implement a shoreland protection strip restoration plan, requested by Jeff and Veronica Lear at 07215 Birdland Dr., Charlevoix, property tax number 15-007-301-011-00.

Respectively Submitted

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

Marlene Golovich
Hayes Township Clerk

Minutes approved as written January 9, 2013

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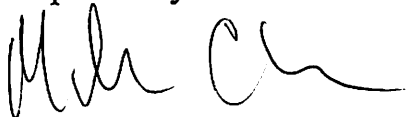
GENERAL FINDINGS OF FACT

- o The Board finds the requested variance in not due to unique circumstances.
- o The Board finds there is an existing non-conforming 10 foot deck.

The Zoning Board of Appeals approves a 10 foot lake front variance, from Section 3.14 Lakefront Regulations for the existing non-conforming 10 foot deck with the following conditions:

1. The existing deck cannot be enlarged in width or length
 2. The existing deck cannot be covered or enclosed
 3. The existing deck must remain an open deck
- requested by Jeff and Veronica Lear at 07215 Birdland Dr., Charlevoix, property tax number 15-007-301-011-00.

Respectively Submitted



Marlene Golovich
Hayes Township Clerk

Minutes approved as written January 9, 2012

ZBA

10/17/12

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

Dan Lueker

Rich Knott

Bill Hume

Art Lueker

Mark Ch

J. Schaefer