

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
April 19, 2017**

The Zoning Board of Appeals hearing was called to order by Jim Rudolph at 7:07 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Paul Hoadley, Bob Jess, Frank Shepherd, Paul Ivan, and Jim Rudolph. Bill Henne, and Tom Darnton were absent. Also present were Larry Sullivan, Zoning Administrator (ZA), Marlene Golovich, Secretary, and Ron Way.

Jim Rudolph asked to be joined in the Pledge of Allegiance.

The ZBA members introduced themselves.

The purpose of the meeting is to hear a request by Jerry & Bev Love for approval to make structural changes to a non-conforming waterfront home pursuant to Article III, Section 3.02 Nonconformities, #10, at 7690 Indian Trails, Charlevoix, property tax number 15-007-130-015-00.

Zoning Administrator Larry Sullivan presented the following information;

PROPERTY INFORMATION:

- 1. Property Tax Identification Number: 15-007-130-015-00**
- 2. Property Address : 07690 Indian Trails, Charlevoix, MI**
- 3. Owners of Record: Jerry and Bev Love**
- 4. Application for approval to add addition received on March 22, 2017**

EXHIBITS

- 6. Application X**
- 7. Published notice 3/23/17**
- 8. Notice of meeting sent to property owners within 300' 3/24/17**
- 9. Site Plan Yes**
- 10. Photos Yes**
- 11. Other**

FINDINGS OF FACT

12. Zoning District: R-1. Minimum lot size: 2 acre, 200 ft.width

13. Lot Dimensions: 407' x208'WF_ . Total lot acres/square footage: 2.308ac/100536 sq.ft.

14. Setback requirements: Front 100' Rear 25'_ Side 15'.

15. Existing setbacks: Front 92'OHWL Rear' Side 80' +- Side 100' +

16. Existing non-conformities: A portion of the dwelling is located within 100' of Lk. Chx. .

17. Previous variance(s) granted: None .

18. Approval request from Section(s) 3.02 10. requesting approval, not a variance of Zoning Ordinance requiring permission of ZBA to add addition to non-conforming structure located within the 100' required setback .

19. Unique features of property: pre-existing porch located within 100' of Lk. Chx.

20. Adjacent properties: residential.

21. % Impervious Surface Allowed 15% % Proposed 8.5% plus or minus .

Zoning Administrator Presentation

The Non-Conforming Section of the Hayes Township Zoning Ordinance was amended on January 11, 2016 with an effective date of January 26, 2016. This amendment resulted in requests to expand a non-conforming structure that is partially within the 100 foot setback needing to be treated in one of the two following ways. If the expansion is to be located within 100 feet of the OHWM (Ordinary High Water Mark) the ZBA is precluded from hearing the request. If the expansion is located beyond the 100 foot setback, the Zoning Board of Appeals is required to grant permission prior to the Zoning Administrator being able to grant the permit.

The additions being proposed to the Love residence entails a small addition that will square off the south east part of the building, extend the deck to the south, add an indoor fireplace that will be attached to the south side of the dwelling and add a 10' by 10' porch to the south side of the dwelling. These additions equate to 180 square feet of addition. The applicant is also proposing to remove an area of approximately 244 square feet of cement decking and replace with an equal amount of pavers.

None of these additions are located within 100 feet of the OHWM of Lake Charlevoix, therefore, the Zoning Board of Appeals has the legal ability to grant permission for the proposed additions. These additions will make a

slight increase to the amount of impervious area on the site but will remain well below the 15% maximum allowed by the zoning ordinance.

The Zoning Ordinance does not contain standards upon which the ZBA can base their decision to approve or deny the requested additions as the Ordinance does for variance requests. Based upon the lack of standards, it is up to the Zoning Board of Appeals to make a determination as to whether to approve or deny the requested additions based upon your judgement.

Larry also stated that the house is not square in design.

Paul Hoadley asked if the porch is at ground level and will a pitch roof be added to replace the existing flat roof. Paul also asked that if no previous variances were granted how did the lake-side porch/deck get into the 100 ft. setback? Larry stated that ordinance changes caused the non-conformity.

Applicant Presentation

Ron Way, representative for the applicant, stated that the home is not square and has an odd design. The home owners wish to spend more time up north and the project is a rehab/renovation.

The Township received a letter of support from John Haggard for this project.

Board Discussion

Frank Shepherd stated that because this is a non-conforming it is why we are here and the water runoff to the lake and its effect on lake quality. Frank stated that during his site visit he noticed multiple black drain tiles. What are they draining and where are they coming from? He also noted that he did see materials in that indicated that the runoff may be coming from the roof. He could not find a catch for the drains so there was no way to tell where the water was coming from but they are active.

The applicant representative was asked if anything being proposed would increase runoff to the lake. The response was it would not be increased by much but some with the roof addition. There are no gutters on the roof.

Paul Hoadley stated that the active drains do affect the ordinance. The current green belt is sparse and an agreement could be made to beef up the greenbelt to mitigate the runoff.

Jim Rudolph stated the first 50' could be beefed up with additional deep root plantings.

Paul stated that we have a shoreland protection strip replanting requirement in our ordinance. ZA Sullivan stated it was Section 3.24. Could the property owners contact Tipp of the Mitt for help with a plan? ZA Sullivan stated they could but Tipp of the Mitt charges for the service.

Bob Jess stated that a second option to replanting the shoreland protection strip was possible. He stated that a gutter system could be installed on the new roof in the area of the fireplace and the water directed away from the lake.

Larry stated that there was an error on memorandum he presented and that the deck was not wood but cement that was being replaced with pavers.

Bob stated that on page 3 of the drawing shows a shed roof that could have a gutter system and tiles to divert water. He stated the existing porch was a hard surface so it is not increasing runoff and the new pavers will allow some drainage.

7:45 Public Comment Closed

Jim Rudolph read Article III, Section 3.02 Nonconformities, #10 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.

Jim Rudolph stated that the existing drain pipes should be investigated.

Options that are being considered are gutters, extra plantings or leave as is. Applicant representative stated that gutters could be added and drain the water towards the neighbors.

Frank Shepherd shared photos he took of the existing drain pipe. They will be printed and added to the zoning file. He also stated that there did not appear to be any erosion damage because of the drain pipes.

Paul asked Ron if the applicant would put in additional plantings or create a rain garden to mitigate the water runoff to the lake.

Jim stated that he did not want to overburden the applicant financially by requiring them to get an official replanting design from Tip of the Mitt.

Marlene reminded the ZBA that the Planning Commission has been provided with an online site that lists all the native planting species and this could be provided to the applicant and the applicant could prepare their own plan. Marlene was reminded that she is only the recording secretary.

ZA Sullivan said a hand drawn plan would be ok.

Paul stated that erosion is not the only problem with runoff, nutrients running into the lake is also a concern. He also stated that he has a long standing concern with no follow up on requirements put on applicants and believes that a formal replanting plan should be on file with the ZA for follow up.

Paul Ivan stated he is well aware of the property & the soil conditions as his family owns property in the vicinity. There is a lot of gravel that offers opportunity to handle runoff.

Jim Rudolph stated that Article III, Section 3.02 Nonconformities, #10 give the ZBA the authority to impose requirement to protect the lake.

Paul stated that the replanting standards for the shoreland protection strip were not in Section 3.24 but in Section 3.14 of the zoning ordinance.

Frank Shepherd suggested a motion to approve the request for an addition with a gutter system installed and a gentlemen's agreement for the additional plants in the shoreland protection strip

Paul Hoadley stated that he agreed that a gutter system and additional plants was a good idea but he would like to see the shoreland protection strip planted by following the Section in the ordinance that has the standards for replanting the shoreland protection strip.

Frank Shepherd made a motion, supported by Bob Jess to approve the addition as presented on the site plan with the addition of a gutter system on the new roof and that the water flow from that gutter system be directed away from the lake and if possible tie in the 3 existing drains to that flow

away from the lake. The additional plants required in the shoreland protection strip will be in place prior to the zoning administrator issuing a zoning permit. The applicant will submit a plan showing the gutter system and the plan for the additional plantings in the shoreland protection strip to Zoning Administrator Sullivan and he will decide if the plantings are adequate.

Board Discussion

Paul stated that he would rather see the additional plantings if the shoreland protection strip follow Section 3.24 than have the zoning administrator decide what is adequate planting.

Ron stated that it may not be reasonable to tie in the existing drains system with the new gutter system.

Paul stated that he agreed with Ron that tying in the existing drains may be an unreasonable burden to the property owner.

Bob stated that the existing drains are lower than the where the new gutter drains will be so plantings are the solution to water draining toward the lake.

Jim stated that a balance is needed to preserve lake quality.

Yays: Frank Shepherd, Bob Jess, Jim Rudolph, Paul Ivan

Nays: Paul Hoadley

Motion carried.

Frank Shepherd made a motion supported by Bob Jess to approve the minutes from March 1, 2017 as written. Motion carried.

Paul Hoadley made a motion, supported by Paul Ivan to adjourn this meeting at 8:28 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as written May 24, 2017

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

Applicant: Jerry & Bev Love
Hearing Date: April 19, 2017

The property identified by property tax number 15-007-130-015-00, located 07690 Indian Trails, Charlevoix, hereinafter referred to as the property

The Board having considered the application, a public hearing having been held on April 19, 2017 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:

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20. Adjacent properties: residential.

21. % Impervious Surface Allowed 15% % Proposed 8.5% plus or minus .

The Board finds that with the addition of a gutter system and additional plantings in the shoreland protection strip the requested approval will not increase the impervious surface to the degree that it will have an adverse effect on lake water quality.

The Board approves the findings of fact and grants the approval of the request for an addition to the non-conforming structure as presented on the site plan with the addition of a gutter system on the new roof section and additional plantings in the shoreland protection strip at the home located at 07690 Indian Trails, Charlevoix, and property tax number 15-007-130-015-00.

Respectively Submitted



Marlene Golovich
Hayes Township Clerk

Minutes approved as written May 24, 2017