

HAYES TOWNSHIP  
ZONING BOARD OF APPEALS MINUTES  
February 4, 2009

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, Brad Kessler, Rich Burnett, Doug Kuebler and Scott Parker. Also present were Jonathan Scheel, ZA and Marlene Golovich, secretary. Audience members were Jim Wernig, Pat O'Brien, Mary Jane and Warren Nugent.

The purpose of this hearing was to hear a request from James & Linda Wernig for a fifty (50) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to replace an existing flat roof with a pitched roof, raise the floor and remodel the interior of an existing structure at 8386 Boyne City Road, property tax number 15-007-003-007-15.

Zoning Administrator Jonathan Scheel explained that the building involved in the variance request is a legal non-conforming structure and was constructed before the adoption of the one hundred (100) foot set back for lake front zoning. The parcel is zoned R1 and has an additional building located to the rear of the property that is being removed. He further stated that Mr Wernig wishes to replace an existing flat roof with a 5/12 pitch roof and raise the floor eight (8) inches to accommodate heating and plumbing. The overall building height will be fourteen (14) feet. This will not be a residence but a personal artist studio.

Pat O'Brien stated that an old addition has already been removed so that the building would conform to the side yard setbacks.

Mr. & Mrs Nugent, adjacent neighbors, stated that they are not opposed to the variance and see it as an improvement.

Jonathan Scheel also stated he received a phone call from another neighbor, Mr Zardis, who was not opposed to the variance.

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

Scott Parker asked if the ZBA should consider the useful life of the building as it exists. Jonathan Scheel responded that there are two ways to look at non-conformities. One is that the Township does not want them at all or two, consider each case individually which is the way the Hayes Township has historically done it.

Scott asked if the applicant had a desire to make this a residential building could the ZBA make it a condition that the applicant would have to re-apply for another variance. Jonathan stated that they could.

Brad Kessler stated he could not get close enough to the structure to make an inspection and feels he is being asked to make a decision without all the facts. He stated that the plan shows the proposed septic system will be on an adjacent property and wondered if it would perk because of the wetlands.

Jonathan Scheel stated that one of the conditions of the variance could be that the new access road to the building not create any additional run off.

Marlene Golovich asked if one of the conditions could be a planting of a shoreland protection strip to aid with any additional road and roof run off. Jonathan stated that there are some cedars in front and some medium depth plants could be added to the front or a rain garden added to a small area to aid with roof run off. Jonathan indicated he did not think it would be legally defensible to require them to plant a shoreland protection strip.

Brad Kessler stated again that the ZBA has no idea what trees and plants are there because no access has been provided.

Rich Burnett asked where the new access road would be located. Mr Wernig stated that access would begin at his home on the adjacent property and end behind the house.

Chair Joni Hosler read the criteria from the Zoning Ordinance Section 7.07 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 legal non-conforming because it was created before the one hundred (100) foot setback 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. It would be unnecessarily burdensome for the applicant to move the entire building just to replace the roof.**
- 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 variance is needed for the applicant to apply a pitched roof and thus increase the property value.**
- 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 as this building has existed for a long time.**

## **Section 7.08        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 8.03 of this Ordinance.

Doug Kuebler made a motion, supported by Rich Burnett to grant a fifty (50) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to replace an existing flat roof with a 5/12 pitched roof, raise the floor eight (8) inches and remodel the interior of an existing structure at 8386 Boyne City Road, property tax number 15-007-003-007-15 with the following conditions:

1. The approved variance is for a personal artist studio only. No residential use is allowed.
2. A Health Dept permit for a septic system is obtained.
3. The roof runoff is to be diverted to a rain garden
4. The rain garden will meet specifications set forth by the Tipp of the Mitt
5. The access road does not change or alter any land within the one hundred (100) foot setback
6. Any trees or vegetation removed for the construction must be replaced as outlined in Section 5:13 G.

Roll Call:

|              |     |
|--------------|-----|
| Rich Burnett | Yes |
| Brad Kessler | Yes |
| Doug Kuebler | Yes |
| Scott Parker | Yes |

Motion carried unanimously.

In other business the Zoning Board of Appeals reviewed the minutes from January 7, 2009. Rich Burnett made a motion, supported by Doug Kuebler to approve the minutes as written. Motion carried unanimously.

Scott Parker made a motion, supported by Doug Kuebler to adjourn at 8:52 p.m. Motion carried unanimously.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Marlene Golovich', with a stylized, flowing script.

Marlene Golovich, Clerk  
Hayes Township

Minutes approved as corrected February 25, 2009.

HAYES TOWNSHIP  
ZONING BOARD OF APPEALS  
DECISION AND ORDER

Applicant: James & Linda Wernig  
Hearing Date: February 4, 2009

The property identified by property tax number 15-007-003-007-15 located at 8386 Boyne City Road, Charlevoix hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on February 4, 2009 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 December 29, 2008.
2. A proposed site plan dated November 10, 2008
3. Color photographs
4. A Notice of Hearing dated January 13, 2009
5. Publication in the Petoskey News Review January 19, 2009.

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.

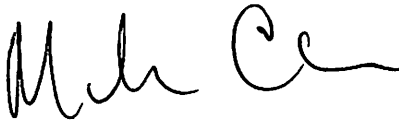
The Board finds the variance granted is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zone district

The Zoning Board of Appeals approves the findings from Section 7.07 of the Zoning Ordinance and the Board approves a fifty (50) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to replace an existing flat roof with a 5/12 pitched roof, raise the floor eight (8) inches and remodel the interior of an existing structure at 8386 Boyne City Road, property tax number 15-007-003-007-15 with the following conditions:

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Marlene Golovich  
Hayes Township Clerk

Minutes approved as corrected February 25, 2009