

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
April 9, 2008

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 Scott Parker, Jim Rudolph, Joni Hosler, Brad Kessler and Marilyn Morehead. Also present were Jonathan Scheel, ZA and Marlene Golovich, secretary. Audience members were Todd Wright, Pat Wickowski, Dave Wickowski, Mary Nugent, Warren Nugent and Paul Zardus.

The purpose of the meeting was to hear a request from Warren Nugent for a 32 ft set back variance from section 5.13 A (1), (lakefront), of the Zoning Ordinance on property tax number 15-007-003-017-00 located at 05510 Rabb Rd., Charlevoix.

ZA Jonathan Scheel stated that there is an existing home which is located 50.98 feet from the all time high water mark. The applicant wishes to demolish this home and build a new home with approximately 2300 sq. ft. and attached garage no closer than 68 feet from the all time high water mark and move the existing garage to the rear of the lot. The parent parcel was divided before the adoption of the Hayes Township Land Division Ordinance and the applicants parcel is irregularly shaped and very narrow to the rear. The property is zoned R-1 and requires a two acre minimum parcel. The parcel has 124' of water frontage.

Todd Wright, representative and builder for the applicant, stated that the parcel is an odd shape and narrows to the rear. There is an existing well, septic lift station and driveway that the applicant wants to continue to utilize. There are also some large trees to the rear of the property that the applicant would prefer not be removed. The new home will reduce the encroachment on the lakefront setback and give the applicant the living area needed to enjoy their home.

Chair Hosler read a letter received from the neighbors (see attached).

Dave Wickowski, an adjoining property owner, stated that he was concerned about the severe slope drainage onto any adjoining property from the new

home. ZA Scheel stated that the applicant will have to have a permit from the Dept of Soil and Erosion before a zoning permit can be issued.

Paul Zardus, an adjoining property owner, asked if this variance would be setting a precedent for neighboring property owners. ZA Scheel stated that every variance case is heard individually and each case must meet the required hardship criteria as stated in the Hayes Township ordinance.

Mr Zardus owns a home at the top of the hill and stated that the construction of a two story home on the applicant's property would obstruct part of his view and be detrimental to his property value.

He also stated that all the property owners share the same private road and he would like to see some type of guarantee that the road would not be damaged during the construction period. The ZBA has no jurisdiction over the private road and therefore can not impose as a condition for the variance any guarantee of the roads condition. Brad Kessler suggested that the property owners adopt a private road agreement addressing this issue. Todd Wright stated that he will take every precaution to protect the drive as well as other adjoining properties and will keep the gravel swept from the road. Mr Nugent stated that they hoped to start the project in early spring to help avoid any heavy equipment being on the road during peak summer months.

Marlene Golovich asked what the width of the lot was at the narrow portion where the new home is to be built, how wide the new home is and how big the attached garage was. ZA Scheel stated that the lot was 70 feet at the narrow portion, the home is 30 ft wide and the garage is 22'x 20'.

Marlene Golovich asked what the height of the new addition would be. Jonathan stated that it would be at or below the required 25 ft waterfront height restriction.

Marlene also asked how far a structure had to be from the septic and the well. Scott Parker stated that any structure has to be at least 5 ft from the septic and 3 ft from the well and that the septic and well must be at least 50 ft apart.

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

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 has an irregular shape which narrows dramatically away from the waterfront.**
- 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 lot was created before the Hayes Township land division ordinance was adopted.**
- 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 will be burdensome because of the dimension and shape of the lot.**
- 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.

Jim Rudolph stated that he did not believe this is the minimum variance needed. He stated that the dimension of the home could be changed and

moved back another 15 ft. He stated that based on the Township ordinance protection of the lake was of utmost importance.

Chair Hosler asked if there was a consensus on this point

Brad Kessler	yes
Scott Parker	yes
Marilyn Morehead	yes
Joni Hosler	yes

Mr Wright asked to address the board and was granted permission. He stated that a reduction in square footage could result in the applicant not removing the old house but instead remodeling and leaving it where it is. He asked how this would serve to protect the lake. He also stated that there were mature trees at the rear of the property that the applicant does not want to cut down.

ZA Scheel stated that at this point the board has 3 options, deny the request, approve the request or approve a reduced variance.

Brad Kessler stated that he thought the better option would be to deny the request and then the applicant could ask for a side yard variance and move the house back.

Mr Nugent stated that he believed they have made a lot of compromises just to get to where they are now. If they have to return at a later date for another variance they will be way behind on the project.

ZA Scheels stated that currently there is no shoreland protection strip. A replanting of the shoreland protection strip could be a condition of the variance based on Section 7.08.

Marilyn Morehead asked if the board could specify the type of replanting. The type of replanting necessary is covered in Section 5.13 of the zoning ordinance.

A variance will do substantial justice to the applicant as well as to other property owners if the existing home is removed and the shoreland protection strip is replanted and the trees at the rear of the property are not removed.

- 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 based on the conditions stated above.**

Marilyn Morehead made a motion, supported by Jim Rudolph to grant a 27 ft variance from section 5.13 A (1), (lakefront), of the Zoning Ordinance on property tax number 15-007-003-017-00 located at 05510 Rabb Rd., Charlevoix to allow the construction of a new home with the closest part of the structure to be no closer than 73ft from the recorded (IGLD) high water level of the lake.

The following conditions of approval have been set forth as allowed by Section 7.08:

1. The property owners are to restore the shoreland protection strip as stated in Section 5.13 of the zoning ordinance including removal of an existing deck and shed. Approval of a replanting site plan must be given by the zoning administrator. It is recommended that the applicant work with either the Tip of the Mitt Watershed Council or Michigan State Cooperative Extension in developing the replanting site plan.
2. All tree removal from the property must be approved by the zoning administrator prior to cutting.
3. The 8 ft front porch can not be enclosed and must remain one story.

Roll Call:

Scott Parker	Yes
Jim Rudolph	Yes
Marilyn Morehead	Yes
Brad Kessler	No

Motion carries.

In other business the ZBA reviewed the minutes from the March 18, 2008 meeting. Scott Parker made a motion, supported by Marilyn Morehead to approve the minutes as corrected. Motion carried unanimously.

Jonathan Scheel handed out a draft letter from the ZBA to the Planning Commission regarding the number of variances granted in the Michigan Shores area and how this problem might be addressed.

Without objection the meeting was adjourned at 9:30 p.m.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Marlene Golovich', with a long horizontal flourish at the end.

Marlene Golovich, Clerk
Hayes Township

Minutes approved as corrected April 23, 2008

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: Warren Nugent
Hearing Date: April 9, 2008

The property identified by property tax number 15-007-300-017-00 located at 05510 Rabb Rd., Charlevoix hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on April 9, 2008 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 March 14, 2008
2. A proposed site plan dated October 18, 2007
3. Addendum prepared by Todd Wright
4. Photo's of existing home
5. Sketch of proposed home
6. Copy of a survey
7. Letter from neighbor
8. A Notice of Hearing dated March 21, 2008
9. Publication in the Petoskey New Review March 21, 2008.

GENERAL FINDINGS OF FACT

The Board finds there is an existing house.

The Board finds the house was built before the 100 ft set back was adopted

The Board finds the existing house will be removed

The Board finds the lot to be irregularly shaped

The Board finds the lot was created before the Township land division ordinance was adopted.

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 variance from Section 5:13 A (1), (lakefront) of the Hayes Township Zoning Ordinance on property tax number 15-007-300-017-00 located at 05510 Rabb Rd., Charlevoix as follows:

Grant a 27 ft variance to allow the construction of a new home with the closest part of the structure to be no closer than 73ft from the recorded (IGLD) high water level of the lake.

The following conditions of approval have been set forth as allowed by Section 7.08:

- 1 The property owners are to restore the shoreland protection strip as stated in Section 5.13 of the zoning ordinance including removal of an existing deck and shed. Approval of a replanting site plan must be given by the zoning administrator. It is recommended that they work with either the Tip of the Mitt Watershed Council or Michigan State Cooperative Extension in developing the replanting site plan.
2. All tree removal from the property must be approved by the zoning administrator prior to cutting.
3. The 8 ft front porch (water side) can not be enclosed and must remain one story.

Roll Call:

Scott Parker	Yes
Jim Rudolph	Yes
Marilyn Morehead	Yes
Brad Kessler	No

Without objection the meeting was adjourned at 9:30 p.m.

Respectively Submitted



Marlene Golovich, clerk

Minutes approved as corrected April 23, 2008