

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
January 7, 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 and Rich Burnett. Absent Doug Kuebler and Scott Parker. Also present were Jonathan Scheel, ZA and Marlene Golovich, secretary. Audience members were John Ferguson.

Election of Officers – Brad Kessler made a motion, supported by Rich Burnett to appoint Joni Hosler chairman of the Zoning Board of Appeals.

Roll Call

Brad Kessler	Yes
Rich Burnett	Yes

Motion carried unanimously.

Joni Hosler made a motion, supported by Rich Burnett to appoint Brad Kessler vice-chairman of the Zoning Board of Appeals.

Roll Call

Brad Kessler	Yes
Rich Burnett	Yes

Motion carried unanimously.

Immediately following the Election of Officers the ZBA heard a request from Anne K. Flaherty for a five (5) foot variance, from Section 4.13B, side yard setback regulations, and a twenty five (25) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to construct a new home at Lot 47 Michigan Shores Subdivision, property tax number 15-007-400-047-00.

John Ferguson, agent for the applicant, stated that the Health Dept mandated the use and location of a mound septic system on the property. The proposed home is thirty feet further back from the high water mark than the home on

the adjacent property. The first floor of the home is approximately 924 sq. ft. with a 12'x21' garage. A variance was given on the adjacent lot #48 on the east side of the property. Mr Furguson further stated that the hardship is not self induced because of the Health Dept. mandated location of the septic system.

Jonathan Scheel stated that he has visited the site many times because the contractor cut trees in the shoreland protection strip. With the advice of the Tip of the Mitt organization the owner had replanted the protection strip.

Brad Kessler asked how the shoreland protection strip pertained to the variance. Jonathan Scheel explained the ordinance and it's importance to the property and adjacent body of water.

Jonathan stated that the home on lot #48 is forty three feet from the all time high water mark. He also stated that the ZBA is left to handle the various changes of the Township lakefront zoning.

Brad Kessler stated that this house is consistent with the rest of the homes and their locations in this neighborhood. The proposed home is not out of scale with the neighbors.

John Ferguson stated there is an additional five feet between the home and the mound septic system that must be maintained because of the high water table on this lot.

All members of the Zoning Board of Appeals as well as all others in attendance read the letters submitted from Vince & Cheryl Zuellig, Patrick & Catherine Scott and Ken & Shirley Polakowski (see attached).

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 is unique because of the high water table and because the lot is legal non conforming in size according to current regulations for zone district R2 which is $\frac{3}{4}$ of an acre, 200 feet at mid point and 100 feet at the water. This lot is 65 feet at the water, 65 feet at mid point and approximately 13,000 sq. ft.**
- 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 is long and narrow with a high water table to the rear. The home is not out of character or size in this area.**
- 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. Because of the lot dimensions and the high water table to the rear and the Health Dept mandated location of the septic system it is burdensome to the applicant.**
- 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 size of the home suits the neighborhood and the surrounding homes.**

- 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.**

Joni Hosler made a motion, supported by Brad Kessler to grant a five foot variance from Section 4.13B, side yard setback regulations, on property tax number 15-007-400-047-00 located on lot 47 Michigan Shores Subdivision, Charlevoix to allow the construction of a new home based on meeting Section 7.07 of the Hayes Township ordinance.

Roll Call:

Brad Kessler	Yes
Rich Burnett	Yes

Motion carried unanimously.

Section 7.07

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 unique because of size and because of the Health Dept. mandated location of the mound septic system.**
- 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 is long and narrow and the location of the mound septic system was mandated by the Health Dept.**

- 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. Because of the high water table to the rear of the property and the Health Dept location of the septic system it is burdensome.**
- 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 size of the home is not out of scale or character with the surrounding homes.**
- 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. The house is comparable in size and design of the surrounding homes and is in fact set back further from the high water mark than its neighbors.**

Brad Kessler made a motion, supported by Rich Burnett to grant a twenty five (25) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to construct a new home at Lot 47 Michigan Shores Subdivision, property tax number 15-007-400-047-00 based on meeting Section 7.07 of the Hayes Township ordinance.

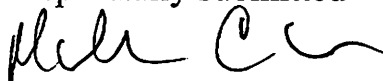
Roll Call

Rich Burnett	Yes
Brad Kessler	Yes

Motion carried unanimously.

Without objection the meeting was adjourned at 9.05 p.m.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: Anne Flaherty
Hearing Date: January 7, 2009

The property identified by property tax number 15-007-400-047-00 located on Lot # 47 of Michigan Shores Subdivision, Charlevoix hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on January 7, 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 2, 2008.
2. A proposed site plan dated October 31, 2008
3. A sketch of survey dated September 24, 2008
4. Arial photo of land.
5. Sketch of proposed home (handed out at hearing)
6. Three letters from neighbors
7. A Notice of Hearing dated December 5, 2008
- 8.. Publication in the Petoskey New Review December 22, 2008.

GENERAL FINDINGS OF FACT

The Board finds the lot to be irregularly shaped
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 for a five (5) foot variance, from Section 4.13B, side yard setback regulations, and a twenty five (25) foot variance, from Section 5.13, Lakefront setback regulations of the Zoning Ordinance to construct a new home at Lot 47 Michigan Shores Subdivision, Charlevoix, property tax number 15-007-400-047-00.

Without objection the meeting was adjourned at 9:05 p.m.

Respectively Submitted

A handwritten signature in cursive script, appearing to read "Marlene Golovich".

Marlene Golovich, clerk

Minutes approved as written February 4, 2009

December 29, 2008

Zoning Board of Appeals
Hayes Township
09195 Old US-31
Charlevoix, MI, 49720

RE: Variance Requests: Flaherty – Lot 47 Michigan Shores Subdivision

Dear Zoning Board Members;

We, Vincent and Cheryl Zuellig, would like to comment on the proposed variances that are being requested by Anne K. Flaherty for Lot 47 Michigan Shores Subdivision. We own Lot 49, Michigan Shores Subdivision along with Ken and Shirley Polakowski.

After reviewing the plans provided, we would like to voice our strong objections to both of the variances being requested. In accordance with Section 7.07 the ZBA has the right to grant dimensional variances when the applicant can demonstrate that strict enforcement of the Ordinance would result in practical difficulty. Per this section, in order to establish practical difficulty, the applicant must establish that all five of reasons A-E are valid. The basis of our objections for each variance request is explained as follows:

REQUEST NO 1: A 5 FOOT VARIANCE FROM SECTION 4.13B, SIDE YARD SETBACK

Section 7.07 A - The width ($\pm$ 65 feet) is consistent with many other lakefront lots in the same subdivision. Therefore, in terms of width, circumstances and conditions of this lot are not unique to this property. Therefore the applicant cannot establish practical difficulty under this clause.

Section 7.07 B - This is a self created hardship because the applicant selected a house plan that is 4.9 feet (according to the site plan on file at the township) wider than what is allowed. As this is a new house, there is no reason that the applicant can't select a different, narrower house plan. There are many sources of floor plans that can fit within a 35 foot or even narrower building envelope. Therefore the applicant cannot establish practical difficulty under this clause.

Section 7.07 C - A narrower building footprint would resolve the need for this variance, and Township, county or state regulations do not prevent the applicant from selecting another footprint. Therefore the applicant cannot establish practical difficulty under this clause.

Section 7.07 D - Again, a narrower building footprint would resolve the need for this variance. Therefore the applicant cannot establish practical difficulty under this clause.

Section 7.07 E - Side yard setbacks in each zoning district are created as a way to minimize the impact of one owner to another. Allowing a variance in a side yard setback, particularly without have established any practical difficulty, will cause adverse impact on the neighboring property and will allow other property owners to request and expect similar variances.

Summary: The applicant has not provided reasons or been able to establish practical difficulty as required by the ordinance. Therefore, we respectfully request that the Zoning Board of

Appeals denies this request for a 5 foot variance from the 15 foot required side yard (a 33% variance) in its entirety.

REQUEST NO 2. : A 25 FOOT VARIANCE FROM SECTION 5.13 LAKEFRONT ZONING

Section 7.07 A - The depth ($\pm$ 200 feet) is consistent with many other lakefront lots in the same subdivision. Therefore, in terms of depth, circumstances and conditions of this lot are not unique to this property. Therefore the applicant cannot establish practical difficulty under this clause.

Section 7.07 B, C & D - It is understood that the applicant has limitations on the house location based on the need to install the septic system and the well and to provide the required isolation distances. In our mind this is an understandable challenge and can create practical difficulty. However, it would seem that if a variance were to be granted, it should be as minimal as possible. To that end we offer two suggestions to reduce the requested variance dimension:

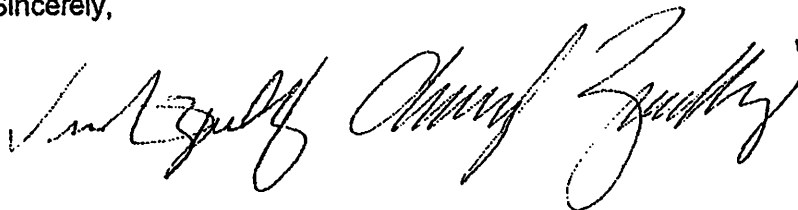
- Select a different house plan that is not as deep and better uses the area within the allowable building envelope (i.e. the space behind the garage). This could minimize the variance request while still maintaining the house at a similar size as originally presented.
- Move the house closer to the septic field location. Based on the site plan provided it would appear that the house can move closer by 10 - 15 feet.

Section 7.07 E - In our opinion, this 25 foot variance request (a full 25 % of the required setback) impacts not only the surrounding neighbors but also the entire community. This is an opinion that is shared by the township and clearly identified under Section 5.13 Lakefront Zoning. The first paragraph indicates "Waterfront property owners have a special obligation to their communities to help preserve the quality of the water". Also, we understand that the current owner has cleared portions of the lot that they were not supposed to and this clearing further puts the lakefront edge at risk. Allowing this large of a variance in the lakefront setback, will cause adverse impact on the neighboring property and community and will allow other property owners to request and expect similar variances in the future.

Summary: While there is practical difficulty due to the septic field and well requirements, it is our opinion that the applicant has not done as much as they could have to minimize the variances being requested. Therefore, we respectfully request that the Zoning Board of Appeals denies this request for a 25 foot variance from lakefront setback and encourages the applicant to explore other house plans and to look at moving the house closer to the drainfield.

Thank you for your consideration regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Vince and Cheryl Zuellig". The signature is written in a cursive, flowing style.

Vince and Cheryl Zuellig

To : Marlene Golovich, Clerk

12/30/08

Subject: Hayes Township Zoning Board of Appeals Meeting on January 7, 2009

Reference : Variance request by Anne Flaherty for lot # 47

In regard to your letter regarding two variances for lot 47 which is next to our house located at 06085 Nine Mile Point Drive. We won't be able to make the meeting scheduled for January 7 due to up coming surgery . We are however, opposed to both variances.

The first variance of a 5 foot side yard setback would bring our homes too close. The lots are relatively narrow, Allowing this change would give a crowded look, less privacy, and be out of line with the other existing homes. Fifteen feet should be upheald.

The second variance of a 25 feet lakefront setback should also be maintained as it would move the house too close to the bluff which could cause erosion problems and would also be out of line with the other existing homes.

Nineteen years ago, we had also asked for a side variance when we realized that our home was too wide for the lot. We were denied our request for a variance. We were disappointed but went back to our builder and came up with a better plan that would fit the lot size and still leave 15 feet on each side. We've never regretted that decision and realize that it was for the good of the neighborhood.

We wish Mrs. Flaherty no ill will and feel confident that she too will be able to find a plan that will comply with the existing regulations.

Sincerely Yours
Patrick and Catherine Scott

Catherine L. Scott
Patrick D. Scott

December 29, 2008

Zoning Board of Appeals
Hayes Township
09195 Old US-31
Charlevoix, MI, 49720

RE: Variance Requests: Flaherty – Lot 47 Michigan Shores Subdivision

Dear Zoning Board Members;

We, Ken and Shirley Polakowski, would like to comment on the proposed variances that are being requested by Anne K. Flaherty for Lot 47 Michigan Shores Subdivision. We own Lot 49, Michigan Shores Subdivision along with Vince and Cheryl Zuellig

After reviewing the plans provided, we would like to voice our strong objections to both of the variances being requested. In accordance with Section 7.07 the ZBA has the right to grant dimensional variances when the applicant can demonstrate that strict enforcement of the Ordinance would result in practical difficulty. Per this section, in order to "establish practical difficulty, the applicant must establish that all five of reasons A-E are valid.

We do not believe that the applicant has demonstrated the practical difficulty for each one of the variances. We refer you to the letter from Vince and Cheryl Zuellig dated December 29th, 2008 which outlines the basis of our objections.

We respectfully request that the Zoning Board of Appeals denies the requested variances as proposed.

Thank you for your consideration regarding this matter.

Sincerely,



Ken and Shirley Polakowski

1-7-09

ZBA

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

Bradley F. Kessler

BKESLERMI@GTLAKES.COM

Jim E. Hester

bubbahos@chartermi.net

Richard B. Smith

Janeth D. Smith

Mark Ch