

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
June 6, 2007

The Zoning Board of Appeals hearing was called to order by vice-chair Brad Kessler at 7:30 p.m.

Members present were Scott Parker, Jim Rudolph, Anne Kantola, and Brad Kessler. Also present were Jonathan Scheel, ZA and Marlene Golovich, secretary. Audience members were Ethel Knepp and Ed Bajos.

The purpose of this meeting was to hear a request from David & Claudia Haluska, 2063 Medina, Wixom, MI 48393 for a five (5) ft set back variance from section 4.13 B and a thirty five (35) ft set back from Section 5.13 A (1), (lakefront), of the Zoning Ordinance on lot #12 Michigan Shores Subdivision, property tax number 15-07-400-012-00.

Ed Bajos, representative for David & Claudia Haluska, stated the lot was created prior to zoning. The Haluskas desire to become full time residents of the area and wish to build a home to accommodate their year round needs. Mr Bajos stated that the applicants will not be able to build their home without the variance.

The Northwest Michigan Community Health Agency is requiring the applicant to have an engineered septic mound system to the rear of the property making that area inaccessible to building. The applicant is asking for the variance based on the location of either homes on the east and west side of their property.

Letters were received from Doug Quada and Dan Keys, adjacent property owners, regarding the variance request. See Attached.

Ethel Knepp stated that most homes in the Michigan Shores Subdivision do not meet the side yard setback.

The applicant will keep as much foliage as possible between their home and the existing neighbors.

Scott Parker asked where the well would be located. Ed Bajos stated possibly the NW corner. Scott asked about the removal of trees to drill the well. Ed stated that the trees could be cut down in the set back to drill the well and the applicant would then replant.

Anne Kantola stated that she did not see a problem with the lakefront variance and stated that it was not really out of character for the subdivision. She stated that the side yard variance was more a grievous and they should be able to maintain the setback.

Jim Rudolph stated that the key is practical difficulty. It is a question of reasonable size of a home. He does not see a practical difficulty; the house is way too big for the lot. Jim said that a single car garage would be better suited for the size of the lot and that 20x20 or 16x20 should be the maximum size of the garage. The applicant wanting a house a certain size does not create a practical difficulty. The location of the septic system does create a practical difficulty.

Scott Parker stated that the applicant is trying to max out their small lot.

Ed Bajos stated that the applicant bought the property assuming they could build the same size home as everyone else.

Ethel Knepp stated that the ZBA should go by section 7.05C

Jonathan Scheels stated that the applicant has limited space but does not see on the plan what the foot print of the building would be if they stayed behind the 100 ft lakefront setback. Ed stated it would be 25 ft north and south and 24 ft east and west. The lot is zoned R2 and the minimum size home required by the ordinance is 900 square feet.

Jim Rudolph said that maybe they just won't be able to have a garage.

Jonathan stated that the house on the west has a variance from the 100 ft lakefront setback and that the house on the east has a variance from the side yard setback.

The ZBA decided to address Section 7.05 C in regards to the variance request for a five (5) ft set back variance from section 4.13 B of the zoning ordinance.

ZONING BOARD OF APPEALS SECTION 7.05 C

- C. Variances - The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations.

Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power to grant dimensional variances providing all the following circumstances exist:

1. Dimensional zoning requirements cannot be met on an existing lot where narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site (such as a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure. **Yes. This lot was created prior to zoning and is located in a unique subdivision. It is zoned R2 which requires ¾ acre with 120' lot width and a minimum 900 sq. ft. home. This lot is extra narrow and of irregular shape.**
2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone. **Yes. Look at other R2 zone districts.**
3. The practical difficulty was not created by an action of the applicant, an agent of the applicant, or a predecessor in title to the applicant, and either existed at the time of adoption of the requirement from which the variances is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a variance. **Yes.**
4. The appellant presents information showing that the requested variance:
 - a. Will not be contrary to the intent and purpose of the zoning ordinance; **Yes**
 - b. Will not cause a substantially adverse effect upon adjacent properties; **Yes**
 - c. Will relate only to the property under control of the appellant; **Yes**
 - d. Will not essentially alter the character of the surrounding area; **Yes**
 - e. Will not increase the hazard from fire, flood, or similar dangers, and **Yes**
 - f. Will not increase traffic congestion. **Yes**
5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zone district. **Yes**

D. In addition to the foregoing conditions, the following rules shall be applied in the granting of variances.

1. In granting a variance, the Zoning Board of Appeals may specify, in writing to the applicant such conditions in connection with the granting that will, in its judgment, secure substantially, the objectives of the regulations or provisions to which such variance applies. The breach of any such condition shall automatically invalidate the variance granted. ***The applicant is to maintain five (5) ft of existing vegetation or plant similar native vegetation at the discretion of the Zoning Administrator on the east side between the homes on lot 12 and lot 13.***

Anne Kantola made a motion, supported by Jim Rudolph to grant a five (5) ft set back variance from section 4.13 B. based on the answers given on Section 7.05 C.

Anne Kantola	Yes
Scott Parker	Yes
Jim Rudolph	Yes

The ZBA decided to address Section 7.05 C in regards to the variance request for a thirty five (35) ft set back from Section 5.13 A (1), (lakefront), of the Zoning Ordinance.

ZONING BOARD OF APPEALS SECTION 7.05 C

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Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power to grant dimensional variances providing all the following circumstances exist:

1. Dimensional zoning requirements cannot be met on an existing lot where narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site (such as a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure. ***Yes. The lot has a shallow depth because of the location of the septic system***

2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone. **Yes. R2 Zoning requirements.**

3. The practical difficulty was not created by an action of the applicant, an agent of the applicant, or a predecessor in title to the applicant, and either existed at the time of adoption of the requirement from which the variances is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a variance. **Yes**

4. The appellant presents information showing that the requested variance:
 - a. Will not be contrary to the intent and purpose of the zoning ordinance; **Yes**
 - b. Will not cause a substantially adverse effect upon adjacent properties; **Yes**
 - c. Will relate only to the property under control of the appellant; **Yes**
 - d. Will not essentially alter the character of the surrounding area; **Yes**
 - e. Will not increase the hazard from fire, flood, or similar dangers, and **Yes**
 - f. Will not increase traffic congestion. **Yes**

5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zone district. **No consensus could be met. The ZBA discussed various ways the size of the home could be reduced to reduce the size of the variance requested. Various members came up with differing figures. It was suggested by Jonathan Scheel that better measurements on the site plan were needed to make a decision. Ed Bajos was asked to verify with the Health Dept. the size and location of the septic system and to provide better measurements on the site plan.**

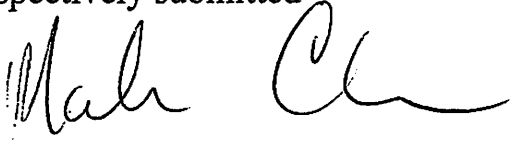
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Jim Rudolph made a motion, supported by Anne Kantola to table the meeting until Wednesday, June 13, 2007 at 7:30 p.m. at the Hayes Township Hall, 09195 Old US 31.

Motion carried unanimously.

Without objection the meeting was adjourned at 10:15 p.m.

Respectively submitted

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

Marlene Golovich, secretary

Minutes approved as written August 21, 2007

6-6-07

ZBA

HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

James M. Rudolph

Scott

Bridley F. Kessler

Annie Kautola

Mark Ch - Markene

Jonah D School ZA