

**HAYES TOWNSHIP  
ZONING BOARD OF APPEALS MINUTES  
SZEWEZUK HEARING  
March 9, 2005**

The Zoning Board of Appeals meeting was called to order by acting chair Joni Hosler at 7:30 p.m.

Members present were Fred Parsons, Joni Hosler, and Marlene Golovich. Also present were Lisa Zipp, secretary and Ethel Knepp, zoning administrator. Audience members present were Martin Nemec (builder for owner), Marc Seelye (Charlevoix County Drain Commissioner), Jim McMahon, Diane McMahon, and Sawyer Golovich.

The purpose of this hearing was to hear a request from Stephen Szewezuk for a thirty-five (35) foot variance from Section 5.13 (lakefront) of the zoning ordinance to construct a deck extension, add chimney chase, and build a roof over porch. The applicant is also requesting a ten (10) foot rear (road-side) and side yard variance from Section 4.13 of the Zoning Ordinance to build a garage at 7049 Nine Mile Point Drive, property tax number 15-07-400-014-00.

Martin Nemec, builder for the owner, was present to represent the owner and speak about these requests.

The first item discussed was the proposed garage. Marc Seelye, Charlevoix County Drain Commissioner spoke about the drain easement located along the edge of the property (known as lot 14). He stated that at the time the easement was created, the drain commissioner at the time did not have it recorded properly. It is recorded as a 15 foot easement. Marc Seelye said they should have required at least a 30 foot easement there. Since it was the county drain commissioner's error, they would probably allow a garage to be built as long as it met the rules of the easement as it exists. The 15 foot easement leaves very little room for servicing the ditch if needed, and it is very unlikely they would approve any encroachment of the existing easement as it is; however, Marc stated he would be willing to listen to the owner/builder if they had a detailed plan that would allow for adequate access to the drain easement.

Ethel Knepp received two (2) letters in opposition to granting this variance request (see attached). The first letter was from Northern Michigan Shores Property Owners Association which opposes the request for the side yard variance due to encroaching 2.5 feet over the existing drainage easement. The second letter in opposition was from Diane and Jim McMahon, nearby property owners. They stated there were alternative locations to building the garage that would not require a variance and gave examples of such. They also stated that allowing the garage to be built as proposed would be too close to the road edge and cause a visual impairment and physical obstruction to safety.

Martin Nemec stated that the garage was a last minute add on to this request. The plans are

premature and not very detailed at this time. Since it appeared this request would not be granted, Martin stated he would discuss more garage options with the owner that would meet setback requirements. The members of the ZBA stated they could table the variances requested for the garage until the next ZBA meeting.

The next items addressed was the thirty-five (35) foot lakefront variance for a deck extension and roof over porch. The new deck has already been built. One of the reasons for building the deck where they did was for a safety concern. There is a master bedroom on the lakeside that has a patio door that opened up to nothing - an 8 foot drop to the ground. They extended the deck in front of that door. The present owner has owned this house for less than a year and lives downstate. Martin Nemec stated this house used to be a rental with one unit up and one down. There is gravel around the back near the deck for parking. He knows the owner would like to clean and fix up the yard. They would like to construct a stairway straight out from the deck and possibly put in a footpath. It is a more direct route to the lake than putting it off to the side. Martin said he doesn't believe this unreasonable request. It will not obstruct the neighbors' views at all. The neighbor to the west has a deck that is not more than 35 feet from the high water mark. The neighbor to the east is at least 5 feet closer to the water than the addition to this house.

Jim McMahon suggested changing the location of the stairs to the sides of the deck (see his letter attached). He stated this may keep foot traffic away from the beach. He further stated that about 40 years ago when this house was built the area now known as the shoreline protection strip was clear-cut. It would be nice to restore the shoreline to a more natural state by planting some native trees and shrubs. This would protect the shoreline more from erosion and water runoff.

Ethel Knepp stated they are allowed to put in a boardwalk to the beach but can't put any sand down.

Martin Nemec stated that building the stairs off to the side would be near or in front of a bedroom window, so he wants to check with the building department to see if that impedes any ingress/egress requirements.

Marlene Golovich stated that this a non-conforming structure. The deck has already been added on without first getting approval. Now, the owner is asking to add even further to the non-conforming structure with the stairs coming straight out. She stated that if they had come to the ZBA first for approval before building the deck, she believes they would have been denied this request. Now the deck is already there. She does not want to make them tear off the deck, but she doesn't want to set a precedence. If they allow this, more homeowners will build additions to their non-conforming structures and then come to get approval after, thinking they won't be made to tear it down. Marlene stated she feels this is being "shoved down our throats."

Martin stated they built the deck where they did because of the safety issue with the bedroom patio door that opened to an eight (8) foot drop. Marlene stated that if it was a safety reason,

they could have taken out the door and replaced it with a window.

Ethel Knepp stated she only published the request for a 35 foot variance which is to the edge of the deck that has been built, not the stairs coming out, so if this request was to be granted, the stairs cannot come out any further than the deck edge.

Acting chair Joni Hosler read the criteria from the Zoning Ordinance Section 7.05(C) which must exist in order for the Board of Appeals to grant a variance:

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.  
There is nothing obstructing.
2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.  
No.
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.
4. The appellant presents information showing that the requested variance:
  - i. Will not be contrary to the intent and purpose of the zoning ordinance;
  - j. Will not cause a substantially adverse effect upon adjacent properties;
  - k. Will relate only to the property under control of the appellant;
  - l. Will not essentially alter the character of the surrounding area;

- m. Will not increase the hazard from fire, flood, or similar dangers, and
- n. Will not increase traffic congestion.

5. The variance 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 discussed the above items and did this request meet the above criteria?

Fred Parsons made a motion to deny the request of the 35 foot lakefront variance from Section 5.13 and order the new deck to be torn down. There was no support for the motion. The motion died.

It was also discussed that a variance for a new chimney chase was not needed as it will be built flush with overhang. The roof of the porch was also discussed. The roof would have to be built so the overhang does not extend past the edge of the deck.

Marlene Golovich asked Ethel Knepp what her opinion was. Ethel stated that this is a 2<sup>nd</sup> level deck. It is not hurting the soil. They are not putting footings in. They are not disturbing the shoreline protection strip. We allow boardwalks to go into shoreline protection strips. The deck is making the house safer, by going in front of the patio door. It is not hurting anyone. She does not think the deck is contrary to the intent and purpose of the zoning ordinance.

Marc Seelye suggested a compromise that the township allow the deck to remain and grant the 35 foot lakefront variance, but make it conditional upon doing some replanting to the shoreline protection strip with native trees and shrubs. If the owner is not willing to do so, make them tear the deck down. Martin Nemec was a bit hesitant to agree to this. Marc Seelye stated, "Let's face it, you broke the zoning laws. There must be some repercussion," and suggested this be the penance. The shoreline protection strip was stated by someone to be from the high water mark back 50 feet. Jim McMahon favored this option as well. It was stated that you can plant junipers and low growing shrubs to not lose the view, along with some trees. The ZBA members seemed to favor this option. It would allow the owner to keep the deck already built, and requiring some replanting of the shoreline protection strip would be a benefit to the protection of the shoreline, and at the same time might deter someone else from building onto a non-conforming structure without first getting approval.

Marlene Golovich made a motion, supported by Fred Parsons, to grant a thirty-five (35) foot lakefront variance from Section 5.13 of the zoning ordinance, conditional upon the following:

1. The stairs do not extend out further than the edge of the deck, going further into the setback. The stairs will have to be built off to the side;
2. The roof overhang of the portion of the deck/sunroom to be enclosed cannot extend

- beyond the variance granted for the edge of the deck;
3. The shoreline protection strip to be replanted with native trees and shrubs with the purpose of such being to protect the shoreline and lake; The ZBA is to see a landscaping plan/drawings for approval; The landscaping plan may be presented to the ZBA at their next meeting (not scheduled yet); The actual planting is to be completed by the end of summer 2005;
  4. If the above conditions are not met, the deck will have to be torn down.

ROLL CALL VOTE:

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| Joni Hosler      | Yes |
| Fred Parsons     | Yes |
| Marlene Golovich | Yes |

MOTION CARRIED.

Marlene Golovich made a motion, supported by Fred Parsons, to table the rear and side variances requested to build a garage until the next ZBA meeting due to needing more information on relocation.

ROLL CALL VOTE:

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| Joni Hosler      | Yes |
| Fred Parsons     | Yes |
| Marlene Golovich | Yes |

MOTION CARRIED.

This hearing was concluded.

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In regular business, the Zoning Board of Appeals reviewed the minutes from the Simon hearing held on February 23, 2005. Fred Parsons made a motion, supported by Marlene Golovich, to approve the minutes as written. Motion carried unanimously.

Joni Hosler made a motion, supported by Fred Parsons to adjourn the meeting. Without objection, the meeting was adjourned at 8:45 p.m.

Respectfully submitted,



Lisa D. Zipp, secretary

Minutes approved as written 4-27-05.

**HAYES TOWNSHIP  
ZONING BOARD OF APPEALS**

**DECISION AND ORDER**

Applicant:     Stephan Szewezuk  
Hearing Date: March 9, 2005

The property is identified by the tax number 15-07-400-014-00. Hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on March 9, 2005 after giving due notice as required by law, the Board having heard the statements of the Applicant and the Board having considered the following exhibits:

1.     A Zoning Application from Stephan Szewezuk and Martin Nemec with drawings;
2.     A letter from Jim and Diane McMahon.
3.     A letter from Northern Michigan Shores Property Owners Association, Inc.

**GENERAL FINDS OF FACT**

1.     The Board finds that there is an existing house which was built before the 100 foot setback from the high water mark of Lake Michigan;
2.     The Board finds there is an existing 15 foot drain easement on the side of this property;
3.     The Board finds that more information is needed on the relocation of the garage, so the rear and side variance requests are tabled until a later date;
4.     The Board finds that a new deck has already been constructed which extends eight (8) feet further into the setback;
5.     The Board finds the new deck constitutes adding onto a non-conforming structure without first getting approval from the ZBA;
6.     The Board finds that the new deck resolves a safety issue that existed at the house regarding a second level bedroom patio door that opened to an 8 foot drop;
7.     The Board finds the shoreline protection strip has been clear cut back when the house was originally built approximately 40 years ago;
8.     The Board finds that it would be desirable to have some replanting done to the shoreline protection strip;
9.     The Board finds that the deck as built is not hurting anyone or anything, and does not appear to be contrary to the intent and purpose of the zoning ordinance;
10.    The Board finds that the steps to the deck should not extend out any further than the edge of the new deck which requires a 35 foot lakefront variance.
11.    The Board finds that rather than making the new deck be torn down, a good compromise is to require some replanting of the shoreline protection strip with native trees and shrubs.
12.    The Board approves the findings from Section 7 of the Zoning Ordinance and the Board

approves a thirty-five (35) foot variance from Section 5.13, Lakefront Setback Requirements of the Hayes Township Zoning Ordinance for property tax number 15-07-400-014-00 conditional upon the following:

- a. The stairs do not extend out further than the edge of the deck, going further into the setback; The stairs will have to be built off to the side;
- b. The roof overhang of the portion of the deck/sunroom to be enclosed cannot extend beyond the variance granted for the edge of the deck;
- c. The shoreline protection strip to be replanted with native trees and shrubs with the purpose of such being to protect the shoreline and lake; The ZBA is to see a landscaping plan/drawings for approval; The landscaping plan may be presented to the ZBA at their next meeting (not scheduled yet); The actual planting is to be completed by the end of summer 2005;
- d. If the above conditions are not met, the deck will have to be torn down.