

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
March 5, 2008

The Zoning Board of Appeals hearing was called to order by Chair Joni Hosler at 7:35 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Scott Parker, Jim Rudolph, Joni Hosler, and Steve Wilson for Marilyn Morehead. Brad Kessler was absent. Also present were Jonathan Scheel, ZA and Marlene Golovich, secretary. Audience members were Jim McMahon, Diane McMahon, Pat Rush, Tom Erhart, Sharon Witucki and Mary McCullough.

The purpose of the meeting was to hear a request from Daniel Keyes for a 23 ft set back variance from section 5:13 A (1), (lakefront), of the Zoning Ordinance on property tax number 15-007-400-001-10 located at 07203 Nine Mile Pt. Drive, Charlevoix.

ZA Jonathan Scheel stated that this case was complicated because when the original home was built the Township used the "normal high water mark" to determine the beginning line of the setback and in later adopted ordinance amendments the township now uses the "maximum high water mark" as determined by the I.G. L. D. The two different measurements create an approximate thirty six (36) ft difference in the line used to measure the beginning of the 100' set back. To further complicate this case the lakefront set back at the time this house was constructed was fifty (50) ft. In 2005 the applicant applied for a variance to add dormers and it was determined that no variance was needed based on the original "normal high water mark" measurement. The application for a variance was withdrawn and a zoning permit issued. No action was taken on the permit and it has expired. The applicant now wishes to make an addition to the home making it a full two stories.

Jonathan also stated that the applicant is in violation of the Township's shoreland protection strip ordinance. Sand has been added, most vegetation was removed and rock jetties were added within the required 50 ft shoreland protection strip. Jonathan met with a representative of the Corp of Engineers and determined that part of the rock jetties are in the Corp's

jurisdiction and the applicant could apply for and receive a permit from the Corp of Engineers for the jetties. Jonathan's main concern is that the shoreland protection strip is restored.

On behalf of Roy Griffitts (potential new owner of the property) the Tip of the Mitt Watershed Council has met with his representatives Tom Erhart and Sharon Witucki to put together a plan to restore the shoreland protection strip.

Sharon Witucki stated that the home is over 40 years old and that the applicant had already received a variance that was not acted on. She further stated that they have done due diligence with the Tip of the Mitt Watershed group and the applicant is very willing to comply with the need to restore the shoreland protection strip.

Marlene Golovich stated that she did not believe that a variance was ever granted but instead it was determined by the past ZA that no variance was needed by using the old "normal high water mark" measurement so the applicant withdrew his application for a variance.

Sharon Witucki stated that Mr Keyes is not expanding the original foot print but just wants to add a second story.

Mary McCullough stated that she lives in the Nine Mile Point subdivision where this home is located. She feels that an addition and update to this home will only increase other property owners' home values and improve the neighborhood. She walks the beach in this area as well as kayaks along the waters edge and feels the home is well shielded from lake views. She also stated the jetties in questions are not large.

Jim McMahon asked where the 100 ft setback line intersects with the house. Jonathan stated that it appeared to be five to seven feet into the original structure not including the sun room.

Jim McMahon stated that he and his wife Diane were very happy that the applicant was willing to restore the protection strip but also asked if the storage of a dock could be addressed as well as the removal of the stone jetties and break wall. Jonathan explained that part of the jetties and break wall were in the Townships jurisdiction and part was in the jurisdiction of the Corp of Engineers. He further explained that the Township will require the removal of the rocks and sand within the shoreland protection strip but

the sand and rocks not in the Townships jurisdiction will be handled by the Corp of Engineers.

The applicant's representatives stated that Mr Keyes was willing to comply with restoration of the shoreland protection strip.

Jim McMahon also stated that a second story addition to the existing sunroom would greatly increase the lakefront profile.

Mr McMahon would also like to see a trash shed at the rear of the lot removed. Mr McMahon was informed that it was either an issue for the blight administrator or the zoning administrator and not part of the variance request.

Chair Hosler asked if there was any further public comment. At this time the public comment period was closed and the ZBA members held discussion.

Scott Parker asked what the dimensions of the original building are, how deep is the deck on the front and the dimensions of the sun room. Sharon Witucki responded that the deck is no deeper than 6 ft., the sun room is 12'x16' and the house is 24'4" x 28'2".

Chair Hosler asked what the distance was between the house the garage. Jonathan stated he thought it was about 17 ft.

The original structure is five to seven ft. into the 100 ft setback and the sunroom projects 12 ft further into the setback and the deck 4 ft more.

Jim Rudolph stated that he was concerned with how much of the old structure would remain or was this going to be another case of a tear down. Jonathan stated that it was a legitimate concern when looking at past variances in this area.

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 height restriction.

Scott Parker stated that he was opposed to an addition to the sunroom and objects to the high profile this would create. A second story addition to the

original structure without adding on to the sunroom would give the applicant an additional 680 sq. ft. of living space.

Scott stated that a variance allowing the original house to be enlarged but not the sun room is in keeping with a variance granted to the home next door and keeps the two homes in line with each other as well as keeping the variance to the minimum needed.

Chair Joni Hosler read the criteria from the Zoning Ordinance Section 7.05C which is required to be considered before approving variances.

- 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, the lots in the subdivision are narrow.**
2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone. **Yes, all lots in this subdivision are narrow but not all lots in this zone district are narrow.**
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, the hardship was created by changes in the zoning ordinance.**

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, it could improve property values**
 - 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, it will fit in with neighboring homes**
 - 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, the applicant wishes to sell the home and the potential buyer requires more space.**
- D. In addition to the foregoing conditions, the following rules shall be applied in the granting of variances.
6. 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.

Scott Parker made a motion, supported by Steve Wilson to grant a seven (7) ft. variance from section 5:13 A (1), (lakefront), of the Zoning Ordinance on property tax number 15-007-400-001-10 located at 07203 Nine Mile Pt. Drive, Charlevoix to allow a second story addition on the original house but not including the sunroom and to grant a nineteen (19) ft. variance to allow a roof over the existing deck on the north east side of the home and for this

roof not to exceed in height the existing roof on the sunroom. This deck may not be enclosed. The restoration plan for the shoreland protection strip must exist, be approved by the zoning administrator and all work completed before a zoning permit is issued.

Roll Call

Steve Wilson	Yes
Jim Rudolph	Yes
Scott Parker	Yes

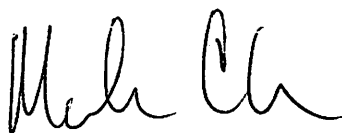
Motion carried unanimously.

The ZBA reviewed the minutes from the February 13, 2008 Zoning Board of Appeals hearing for Indian Shores LLC. Jim Rudolph made a motion, supported by Steve Wilson to approve the minutes as corrected. Motion carried unanimously.

The ZBA members were handed rules of procedure for their review and adoption at the next ZBA meeting.

Jim Rudolph made a motion, supported by Joni Hosler to adjourn at 9:20 p.m.

Respectfully submitted



Marlene Golovich, Clerk
Hayes Township

Minutes approved as written March 18, 2008

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: Daniel Keyes
Hearing Date: March 5, 2008

The property identified by property tax number 15-007-400-001-10 located at 07203 Nine Mile Pt. Drive, Charlevoix hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on March 5, 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 January 28, 2008
2. A Certificate of Survey (sketch) dated March 30, 1990
3. Revised sketch of land
4. Additional sketches of the home
5. Copy of previous variance application
6. Sketch provided by ZA showing types of water marks
7. Photos of house
8. A Notice of Hearing dated February 4, 2008
9. Publication in the Petoskey New Review February 13 and February 27, 2008.
10. Letter from Jim & Diane McMahon
11. Letter from Tip of the Mitt Watershed Council
12. Approved site plan from adjoining lot

GENERAL FINDINGS OF FACT

The Board finds there is an existing house.

The Board finds the house was built using the "normal high water mark"

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 7.05C 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 15-007-400-001-10 located at 07203 Nine Mile Pt. Drive, as follows: a seven (7) ft. variance to allow a second story addition on the original house but not including the sunroom and to grant a nineteen (19) ft. variance to allow a roof over the existing deck on the north east side of the home and for this roof not to exceed in height the existing roof on the sunroom. This deck may not be enclosed. The restoration plan for the shoreland protection strip must exist, be approved by the zoning administrator and all work completed before a zoning permit is issued.

Jim Rudolph made a motion, supported by Joni Hosler to adjourn at 9:20 p.m.

Respectively Submitted

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

Marlene Golovich, clerk

3-5-08

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HAYES TOWNSHIP
PLANNING COMMISSION
MEMBERS ATTENDANCE

James M. Ruckelshaus

Steph B. Wilson

Mike Hahn

Jim Edwards

Mark C.

J. Schell