

HAYES TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES

July 27, 2016

The Zoning Board of Appeals hearing was called to order by Chair Bill Henne at 7:02 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Paul Hoadley, Jordan Nystrom, Bill Henne, and Tom Darnton. Marilyn Morehead was absent. Also present were Larry Sullivan, ZA, Marlene Golovich, Secretary, Jill Trager, Rick Trager, Nick Keen, Howard Newkirk, and Michael Mac

Chair Bill Henne asked to be joined in the Pledge of Allegiance.

The ZBA members introduced themselves.

Chair Bill Henne reviewed the Order of Business and asked for the zoning administrator's presentation.

**Zoning Administrator Presentation**

Larry Sullivan stated the purpose of the meeting is to hear a request by Richard and Jill Trager for a 25 foot variance from Section 3.14,2,a, Waterfront Regulations to allow the removal of septic tank and to rebuild or reconfigure the existing deck which is located above the septic tank at 06710 Peaceful Valley Road, property tax numbers 15-007-001-017-00 and 15-007-001-014-15 currently owned by Geraldine Creasey. The applicant also wishes to abandon the current drain field and add a pump station to pump liquids to a location behind the house. Larry stated that the health department has the authority to place the location of the septic tanks, drain field and pump station and he believes they do not usually allow them within 100 feet of the lake. He stated that the applicant has presented 3 variations of deck replacement.

Zoning Administrator Larry Sullivan presented the following information;

**Property Information:**

1. Property Tax Identification Numbers 15-007-001-017-00 and 15-007-001-

014-15

2. Property Address: 06710 Peaceful Valley Road
3. Owners of Record: Geraldine Creasey
4. Application for Variance received on June 29, 2016
5. Agent representing owners: Richard and Jill Trager

### Exhibits

6. Application x
7. Published notice x
8. Notice of meeting sent to property owners within 300' x
9. Site Plan x
10. Photos
11. Other

### Findings of Fact

12. Zoning District: R-1 . Minimum lot size: 2 acre
13. Lot Dimensions: Irr. 170' x Irr. 300' . Total lot acres/square footage: Approx 1.5 acres
14. Setback requirements: Front 100 Rear 25 Side 15 .
15. Existing setbacks: Front 88'+or- Rear 170' +or- Side 31'+or- Side 60'+or-
16. Existing non-conformities: Structure located within 100 foot setback from OHM .
17. Previous variance(s) granted: 1987 Lot split and reconfiguration .
18. Variance request from Section(s) Sec. 3.14 2. A. of Zoning Ordinance requiring 100 foot setback from OHM .
19. Unique features of property: No record as to when building and deck was constructed, appears prior to zoning be adopted .
20. Adjacent properties: .
21. % Impervious Surface Allowed 15% % Proposed .
22. Request to remove deck to allow the removal of septic tank and reconfigure deck or to replace deck as it currently exists.

Larry read his findings of fact as presented.

There was an amendment to Section 3.02 Nonconformities in January 2016 adding number 9 and 10. The amendment limits the power of the ZBA. They have no legal authority to approve an enlargement of a non-conforming building if the enlargement would increase the degree or extent of the non-conformity.

Larry read section 3.02 Nonconformities 9 and 10 of the Hayes Township zoning ordinance.

9. A nonconforming building or structure, whose nonconformity is not related to the waterfront regulations of this Ordinance, may be enlarged or altered, provided that such enlargement or alteration does not increase the degree or extent of the nonconformity of such structure.

10. A nonconforming building or structure, whose nonconformity is related to the waterfront regulations, must obtain ZBA approval in order to enlarge or alter the structure and shall only be permitted in a manner that does not increase the degree or extent of the nonconformity. The ZBA may impose conditions at the time of approval that would lessen the impact or partially mitigate the impact of the nonconformity on the water quality.

### **Applicant Presentation**

Rick Trager stated they have done their due diligence regarding this property. They discovered that the current septic system has failed and a new drain field needs to be put into place. They must remove the deck to gain access to the existing tanks so they may be inspected by the health department and hooked up to a new system to be determined by the health department. The new pump station will also be located in the 100 foot set back area. They wish to rebuild their attached deck with a new configuration which they believe will be less non-conforming. They presented 3 new configurations for replacing the deck and their first choice would be option B as presented on the site plan.

Paul asked if the applicant would also need a variance for the pump station to be located in the 100 ft set back. Zoning Administrator Sullivan stated they would.

Paul asked if the pump station could be moved behind the 100 ft set back. Bill Henne replied that you need gravity to make this system work and if you move it up the hill (behind the 100 ft setback) it would have to be put in a very deep hole to create the gravity feed and it may not be possible to go deep because of the water table. Bill stated that the health department will assess the needs and the site conditions and require the correct system necessary.

Paul stated that it appears the applicant needs two variances, one for the deck replacement and one for the pump station.

### **Public Comment**

Howard Newkirk, a neighbor, is concerned about the current septic system. After speaking with a septic person it is his belief that the current system had required an aerator and the location of the drain field is a problem. He would like to see the applicant pump and demolish the current tanks and replace them with new tanks and a pump station. He would also like to see the drain field be put in an existing open area and not to have trees removed to locate the new drain field.

Mac, the applicant's realtor stated the current drain field may only be 35 ft from the lake. The new pump station would be located to the side of the house and the health department would monitor it.

Howard Smith, the applicant's builder stated it is very beneficial to the environment to allow the pump station.

Jordan asked how they are accessing the current septic tank if it is under the deck. There is an access door built into the deck.

A letter of support was received from Haggards Plumbing and Heating.

### **Public comment closed**

### **Board Discussion**

Paul Hoadley stated that the first issue is if they can replace the deck after it has been removed. The current deck measures 470.6 sq. ft. and he believes the ZBA cannot grant a variance that increase a non-conforming structure within the 100 ft setback so they must consider size and location.

Tom stated that replacing the deck is the issue and it cannot be larger than the current square footage or closer to the water than it exists now.

Bill stated he agreed.

Jordan stated that he agreed but wonders where Paul got his measurements. Paul stated that he used software for assessors that you put the measurements in and it calculates the square footage.

Paul Hoadley explained that the ZBA may grant a variance with conditions. One of those conditions could be the restoration of the shoreland protection strip. Paul explained the need for a shoreland protection strip and how it protects the water quality in the lake. He asked the applicant how they feel

about removing the detached deck that is located in the shoreland protection strip area and restoring the shoreland protection strip. The applicant stated that their attraction to the property was the clear view of the lake and open access to the water. Paul explained that the planting to protect the lake do not have to interfere with the views or lake access. The plantings just need to be native and deep rooted.

Tom Darnton stated he just wanted to clarify that there are two different decks on the property and that the one in the shoreland protection strip was not the one being considered for a variance. Tom also stated that he understood that the square footage of a non-conforming structure on the lake front cannot be increased.

Bill Henne asked if the ZBA wanted to consider putting a condition on the proposed variance to restore the shoreland protection strip as allowed in Section 8.08.

Nick Keen suggested that the ZBA leave the decision up to County Soil Erosion. The ZBA explained that the County Soil Erosion has no authority to enforce the Township ordinance.

Larry Sullivan asked the applicant if they had future plans to add a second floor to the home. They stated the home already has a second floor but they plan on adding dormers. Paul Hoadley stated that it would require them to get a variance to add dormers. He also stated they have no legal authority to approve an enlargement of a non-conforming building if the enlargement would increase the degree or extent of the non-conformity.

Chair Bill Henne read the criteria from the Zoning Ordinance Section 8.07 which is required to be considered before approving variances. The variance being considered is for a 25 foot variance from Section 3.14,2,a, Waterfront Regulations to allow the removal of septic tank and to rebuild or reconfigure the existing deck which is located above the septic tank.

### **Section 8.07 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:

1. 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. **The septic tanks are located under the deck and the drain field is too close to the lake. The drain field has failed and needs to be moved. It is not due to the applicant personal or economic hardship.**

2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). **The current and very old septic system has failed and is not the fault of the property owners.**

3. 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 any permitted purpose, or will render conformity with those regulations unnecessarily burdensome. **The need for a deck or stairs for doorways is a safety issue and it is reasonable to provide for the use of existing ingress/egress.**

4. 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. **Other property owners have lakeside access to their property and it is reasonable and consistent with other property owners.**

5. 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. **There is no evidence the granting of the variance will be harmful.**

Paul Hoadley made a motion, supported by Bill Henne to grant a 25 foot variance, from Section 3.14.2,a, Waterfront Regulations based on the findings of fact to remove the current attached deck from the home to allow for maintenance on the failed septic system and to rebuild the deck with a deck area not to exceed 470.6 square feet and up to 20 square feet for steps that will not extend any closer to the water than the existing southwest corner of the house as shown on the site plan and to allow a pumping

chamber within the 100 foot set if it is the recommendation of the Health Department of Northwest Michigan.

Yays: Jordan Nystrom, Tom Darnton, Bill Henne, Paul Hoadley

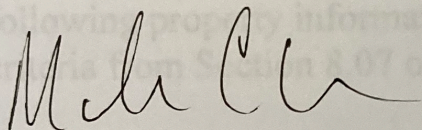
Nays:

Motion carried.

Jordan Nystrom made a motion, supported by Paul Hoadley to approve the minutes from June 3, 2016 as written. Motion carried unanimously.

Paul Hoadley made a motion, supported by Tom Darnton to adjourn this meeting at 9:04 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, Clerk  
Hayes Township

Minutes approved as written August 10, 2016

2. Property Address: 06710 Peaceful Valley Road
3. Owners of Record: Geraldine Creasey
4. Application for Variance: received on June 29, 2016
5. Agent representing owners: Richard and Jill Trager

Exhibits

6. Application x
7. Published notice x
8. Notice of meeting sent to property owners within 300' x
9. Site Plan x
10. Photos

HAYES TOWNSHIP  
ZONING BOARD OF APPEALS  
DECISION AND ORDER

Applicant: Richard and Jill Trager  
Hearing Date: July 27, 2016

The property identified by property tax numbers 15-007-001-017-00 and 15-007-001-014-15 currently owned by Geraldine Creasey, located at 06710 Peaceful Valley Road, Charlevoix, hereinafter referred to as the property

The Board having considered the application, a public hearing having been held on July 27, 2016 and after giving due notice as required by law, the Board having heard the statements of the applicants and the applicants representative, public comments and the Board having considered the following property information, exhibits, findings of fact and considering the criteria from Section 8.07 of the Hayes Township Zoning Ordinance:

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## Findings of Fact

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Approx 1.5 acres
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requiring 100 foot setback from OHM .
19. Unique features of property: No record as to when building and deck  
was constructed, appears prior to zoning be adopted .
20. Adjacent properties: .
21. % Impervious Surface Allowed 15% % Proposed .
22. Request to remove deck to allow the removal of septic tank and  
reconfigure deck or to replace deck as it currently exists.
23. On January 11, 2016 the Hayes Township Zoning Ordinance was  
amended to include Sections 3.02, 9 and Section 3.02, 10.

The Board finds the septic tanks are located under the deck and the drain field is too close to the lake. The drain field has failed and needs to be moved. It is not due to the applicant personal or economic hardship.

The Board finds the current and very old septic system has failed and is not the fault of the property owners.

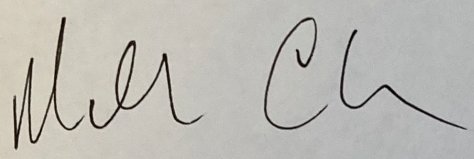
The Board finds the need for a deck or stairs for doorways is a safety issue and it is reasonable to provide for the use of existing ingress/egress.

The Board finds other property owners have lakeside access to their property and it is reasonable and consistent with other property owners.

The Board finds there is no evidence the granting of the variance will be harmful.

The Board approves the findings of fact and the findings from Section 8.07 of the Zoning Ordinance and grants a 25 foot variance, from Section 3.14,2,a, Waterfront Regulations based on the findings of fact to remove the current attached deck from the home to allow for maintenance on the failed septic system and to rebuild the deck with a deck area not to exceed 470.6 square feet and up to 20 square feet for steps that will not extend any closer to the water than the existing southwest corner of the house as shown on the site plan and to allow a pumping chamber within the 100 foot set if it is the recommendation of the Health Department of Northwest Michigan at 06710 Peaceful Valley Road, Charlevoix, and property tax numbers 15-007-001-017-00 and 15-007-001-014-15.

Respectively Submitted



Marlene Golovich  
Hayes Township Clerk

Minutes approved as written August 10, 2016

