

**ESCANABA ZONING BOARD OF APPEALS
ROOM C101, CITY HALL, ESCANABA, MI
TUESDAY, JUNE 14, 2016**

A meeting of the Escanaba Zoning Board of Appeals was held on Tuesday, June 14, 2016, at 6:00 p.m. at the City Hall, 410 Ludington Street, Escanaba, MI 49829.

PRESENT: Chairman Jon Liss, Members Dennis Renken, Mark Hannemann, Judi LaCosse, William (Bill) DeHaan, Code Official Blaine DeGrave, and Executive Assistant Buffy Smith

ABSENT: Member Joe Klem

Meeting called to order at 6:00 p.m. by Chairman Jon Liss

ROLL CALL

Executive Assistant Buffy Smith conducted the roll call.

APPROVAL/CORRECTION OF THE SEPTEMBER 1, 2015 BOARD OF APPEALS MINUTES

A motion was made by Member LaCosse, seconded by Member Hanneman, to approve the September 1, 2015 meeting minutes as submitted. Ayes were unanimous.

APPROVAL/ADJUSTMENTS TO THE AGENDA

None.

CONFLICT OF INTEREST DECLARATIONS

None.

UNFINISHED BUSINESS

None.

PUBLIC HEARING

Blaine DeGrave stated a request has been made from Beverly and Claude Kobasic for a hearing for a use variance from Zoning Ordinance requirements in accordance with Chapter 5 Residence "A" Districts, Sections 501.1 and 504 of the City's Zoning Ordinance. The Kobasic's are requesting a use variance be granted for property located at 3086 Lake Shore Drive, which would allow them to build a detached garage at the property without first constructing a primary permitted use (i.e. single-family dwelling) on the premises.

Blaine DeGrave stated the staff overview of the request.

The City of Escanaba Zoning Ordinance, Section 502.1 and 504 requires that a "Principle Use" structure be established before the development of an "Accessory Use", as defined in Chapter 1 General Provisions, Section 111, and General Definitions under "Principal Use", "Accessory Use" and "Yard – Rear". In this case, a "Principle Use" structure within a designated "Residential A" zoning district would be a single-family dwelling.

In accordance with Section 501.1. Purpose of the Escanaba Zoning Ordinance, the single-family dwelling district is for the purpose of primarily accommodating conventional single-family dwellings, which are constructed in accordance with applicable County and State building code requirements as adopted by the State of Michigan and Delta County under the “Michigan Residential Code”. A single-family dwelling is also allowed to have an accessory use, such as the proposed detached garage, only when the primary use is in existence. An accessory use means a use customarily incidental and subordinate to the principal use of the land or building and located on the same lot as the principal use.

In the application for the Board of Appeals, the appellant is requesting a variance be granted which would allow them to construct a 70’x42’x12’ detached garage on the rear portion of the property located at 3086 Lakeshore Drive without having first built a primary use structure such as a single-family home. The applicant has stated their intent is to build a single family home in the future.

Blaine DeGrave stated the proposed findings:

1. Claude and Beverly Kobasic is the owner of record for the property located at 3086 Lakeshore Drive.
2. In accordance with Section 304.1.4 Advertisements of the Zoning Ordinance, all fee and notification requirements of the Zoning Ordinance have been accommodated for. Meeting notices were placed in the Escanaba Daily Press on Tuesday, June 7, 2016 indicating the nature of the appeal and the date of the hearing between seven (7) and twenty (20) days before the hearing date.
3. Letter notices were sent out to all property owners within 400 feet of the property indicating the nature of the appeal and the date of the hearing on June 14, 2016. A meeting notice was also placed on the City website and on the City Facebook page on Friday, June 3, 2016.
4. On May 5, 2016 Beverly and Claude Kobasic filed an application to appear before the Board of Appeals. In the application the appellants were asked to answer the following questions.
 - (a) (Question) PLEASE DESCRIBE THE REASON(S) FOR REQUESTING A VARIANCE FROM ZONING ORDINANCE REQUIREMENTS:

(Answer) Would like to build a detached garage at the rear property area prior to building the house to work out of while building and to house tools and equipment as our present home will be sold.
 - (b) (Question) DESCRIBE WHY THIS PROBLEM IS NOT SELF-CREATED:

(Answer) Left blank by the appellant.
 - (c) (Question) DESCRIBE ANY NEGATIVE IMPACT TO THE ADJACENT PARCELS(S) THAT MAY RESULT FROM GRANTING OF THIS VARIANCE:
(Answer) Appellant answered “None”.

(d) DOES THE PROPERTY POSSESS UNIQUE CHARACTERISTICS (NOT COMMON TO THE GENERAL AREA):

(Answer) Left blank by the appellant.

Blaine DeGrave stated the powers and duties of the Board of Appeals.

In accordance with Chapter 3, Board of Appeals, the ordinance allows the Board of Appeals the power to hear and decide on appeals where it is alleged that there is an error in any order, requirement, decision, determination, or interpretation of the code by the Code Official. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the appeal and shall make an order, requirement, decision, or determination as in the Board's opinion ought to be made on the matter.

If there are practical difficulties or unnecessary hardships in carrying out the strict letter of the ordinance, the Board of Appeals may, in passing appeals, grant a variance in any of the provisions relating to the construction, or structural changes in equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

The presence of four (4) members is necessary to constitute a quorum and a majority vote of the members of the Board shall be necessary to reverse an order, requirement, decision or determination of an administrative official or to decide in favor of the applicant in the case of a variance, exception or interpretation, except that the concurring vote of four (4) of the members shall be necessary to grant a variance from uses of land permitted by the Zoning Ordinance.

The Board shall have the power to authorize specific variances or departures from this zoning code, if all of the basic conditions are satisfied as defined in Section 305.4 Basic Conditions of the Zoning Ordinance, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this zoning code. A variance from the use requirements of this Zoning Ordinance may only be granted if it is determined that all basic conditions have been satisfied and that there is an unnecessary hardship created by those use restrictions.

The basic conditions are as follows, along with staff opinion (in bold):

- A. The spirit of the zoning code shall be observed, public safety secured, and substantial justice done.
- B. There is no substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located. **Staff Comment: If a single-family structure is not constructed, the presence of a large commercial type garage could have an adverse effect upon property values.**
- C. The difficulty or hardship relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable. **Staff Comment: Staff believes this would be the only residentially zoned property within 300 feet that would not have a primary use such as a single-family home located on the lot before an accessory structure is built.**
- D. The practical difficulties or unnecessary hardships are unique to the property under consideration and not to the general neighborhood, and shall apply only to property that is under the control of the applicant.
- E. It shall be necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

- F. There is a clear showing of an unnecessary hardship in that the property as a whole cannot reasonably be put to a use authorized by this Zoning Ordinance. **Staff Comment: Staff believes the only unnecessary hardship that could be claimed is one of financial which is not specific to the land.**
- G. The alleged hardship or difficulty is not solely economic and is based on the reasonable use of a particular parcel of land. **Staff Comment: Based on comments made by the applicant, the alleged hardship or difficulty is solely economic and based on their ability to sell their existing home located outside the City limits.**
- H. It may be denied where the alleged practical difficulties or unnecessary hardships resulted from an act of the applicant, or a person in privity or concert with the applicant. **Staff Comment: Staff believes passage of a variance would be the allowance of a special privilege not available to all residents.**

The Board of Appeals needs to determine if there is a practical difficulty or unnecessary hardship prior to granting any variance. The granting of a variance should be in harmony with the general purpose and intent of such documents as the Zoning Ordinance. The Board of Appeals should determine if a literal interpretation of the provisions of these documents could deprive the property owner of rights commonly enjoyed by other properties in the same district.

Blaine DeGrave stated the staff summary.

The Board of Appeals does not have the authority to alter or change the requirements of the Zoning Ordinance without first establishing that a hardship exists. The Board of Appeals must determine if there is a hardship or difficulty, which is not a result of an act, created by the owner and is not solely economic in nature. Variances are not intended to relieve requirements of the Zoning Ordinance that are preventing the owner from doing what they wish. Instead the Board of Appeals is intended to serve as a safety valve in those cases where the application of the zoning requirements results in a practical difficulty or unnecessary hardship. Provided, however, that in interpreting and applying the provisions of the ordinance, the requirements shall be deemed to be the spirit and intent of the ordinance and would not constitute the granting of a special privilege.

In the case of the application before the Board of Appeals, it is believed that relating to the basic conditions, that the spirit of the zoning code would not be properly served and that there is no clear showing of a substantial difficulty or hardship relating to the property, which is not a result of an act created by the owner and is solely economic in nature. The property was also recently purchased by the applicant with the knowledge that the property was zoned as a Single-Family Residence District and that a primary use would have to be built before an accessory use could be built.

In accordance with the Escanaba Zoning Ordinance and State law, a decision of the Board of Appeals shall be final. However, any party having a substantial interest affected by an order, determination, or decision of the Board of Appeals, may appeal to the Circuit Court if such appeal is made to the court within twenty-eight (28) days after rendering of the final Board decision.

Jon Liss opened the floor for discussion from Claude and Beverly Kobasic as to where they would like to head with this project.

Claude Kobasic stated his current residence is 4764 11.5 Road in Ford River. The current house is 5,000 square feet for only two (2) people. This property has 25 acres of land/yard which isn't needed anymore. In speaking with the realtors, they feel it will take some time to sell the property. Claude said since August of last year, he has suffered health issues and believes his

current property is too much work to maintain for him and his wife. He would like to sell the property and would like to have a place to store a lot of his equipment (motorcycle, boat, etc.). He said, if needed, they will rent a house for a year. He would like to first build a garage on the property located at 3086 Lake Shore Drive and then once complete, begin building a house. He's retiring in August of this year and wants to be around when the house is getting built. He stated there will not be any business activity from the garage. They own other property and can use it for business if needed. The Lake Shore Drive property will be for personal use only. Claude said he just wants to live in town with the lifestyle that City living would allow (city garbage, city lights, bike path etc.). He offered to sell the lot back to the Board if the variance request is denied this evening.

Judi LaCrosse said the names on the address listing within 300 feet of the property show businesses, except four (4) residential uses. She stated that the four (4) residential people are not present so they must not have any issues with this variance request. She also stated she doesn't understand how this area is considered residential when there are businesses within this area.

Jon Liss stated it looks like a mixed use for the surrounding property.

Claude Kobasic stated there are a lot of commercial businesses in the area. He said when he bought the property, he believed the realtor who said, in discussion before the property purchase, that he would be able to do what he planned. He doesn't understand why there is a problem with his plans when there is commercial business in the area.

Dennis Renken questioned Claude Kobasic on the location of the garage. Claude replied it will be toward the back of the property. He will build the garage 12 to 15 feet, or whatever the required amount of space is needed, from the property line.

Blaine DeGrave stated to the Board that the back yard space definition is hard to determine in this case without knowing the location of the back yard because a house doesn't exist on the property. He stated only 50% of the backyard space can be used for a garage.

Claude Kobasic replied that once the garage is constructed he would meet the requirements necessary there after based on the location of the garage. Blaine DeGrave added that the house would have to be built in accordance with the setback requirements, size requirements (only 35% of the lot can be used), etc. thereafter.

Jon Liss stated that if a variance was granted, he questioned if both a garage and house would fit on the property. He said it does show on the sketch plan as submitted that both buildings would fit.

Claude Kobasic stated he wants to build a double story house between 2,800 – 3,000 square feet, with one bedroom on the first floor, and two bedrooms on the second floor so the house is attractive to sell down the road, if his children do not want it when he is deceased. He passed around three (3) house design examples for the Board to review. In the end, he feels the value of the property will be around \$300,000-\$400,000. He would also like a porch, concrete driveway, etc.

Jon Liss opened discussion up to the Board.

Bill DeHaan stated he believes if a variance is granted it will affect the integrity of the Zoning Ordinance. He doesn't believe there is no real compelling hardship. He said if a garage is built,

but not a house (due to health issues or any other reason), then a non-conforming property use will be in effect, which is never a good thing.

Judi LaCosse stated the area shouldn't be zoned Residential A and she doesn't know if this can be changed. She stated she is in favor of the request.

Mark Hanneman agrees with Bill DeHaan and questioned why a house and garage cannot be built at the same time.

Dennis Renken stated he didn't realize all the equipment the Kobasic's owned. He was thinking a van could be used to store the equipment until he realized the amount of space needed. He also agrees with Bill DeHaan that changing the Zoning Ordinance is not good. He said he would have difficulty granting the request.

Jon Liss agrees that the zoning should be considered light commercial due to what is located in this area, but the Zoning Ordinance is as stated. With that being said, if the Board was to consider granting this request, a stipulation could be included where a house has to be built and the garage has to have residential siding such as stone, cedar, etc.; not steel, which is considered commercial.

Jon Liss questioned the time frame on the project.

Claude Kobasic stated he would build the garage this summer. His current property has been looked at by appraisers; and if the house does sell quickly, he wants to be all set before then. He believes the garage will take about a year to build. He will not be doing the building himself but will oversee the project. He wants the garage to have heat, concrete, etc. He wants the garage at a lower level than the future house. He doesn't want the garage seen well from the road. He also suggested putting a house in the garage (on a 2nd story) if the variance request as presented is denied.

Jon Liss replied to Claude Kobasic that it would become a whole different situation if he goes this route, since this would be considered building a house with an attached garage.

Jon Liss stated a timeline needs to be followed, as to what gets built and when, if the variance request is granted.

Blaine DeGrave stated a house has to be built within eighteen (18) months on a piece of property.

Blaine DeGrave stated that Zoning Ordinances are in place for a reason, to keep the integrity of the Escanaba system and the State requirements. He said making a change to the Zoning Ordinance in this particular case opens the door for possible problems in the future.

Bill DeHaan questioned what the recovery plan would be if the house wasn't built as agreed to. He also stated that if you make an exception for one (1) person, an exception has, or should be, considered for the next person; otherwise it shows favoritism, and this wouldn't look good in court (if a case went this far). He said if there is no real hardship, the integrity of the Zoning Ordinance needs to be considered first.

Claude Kobasic asked if he can build a garage with a house on the second story. He said he will build the 2nd house (the original house) down the road.

Jon Liss stated the new arrangements, a house with an attached garage, will need to be brought to Mr. O'Toole for review and approval.

Mark Hanneman questioned if a house on top of the garage and a second house on the property is allowable. Jon Liss replied that Mr. O'Toole would be the person who would review the new proposed plans.

Jon Liss asked the Board for a motion, if a variance is going to be granted.

A motion was made by Member DeHaan, seconded by Member Hanneman, to deny the use variance from the zoning requirements request, which would allow Claude and Beverly Kobasic to install a detached garage at 3086 Lake Shore Drive, which is zoned as Residential A Single Family District, without having a primary permitted use, such as a single family dwelling. Ayes were unanimous with the exception of Member LaCosse.

Blaine DeGrave stated a zoning permit application for the new plans will need to be submitted to Mr. O'Toole for review and approval.

No other comments were made.

ADJOURNMENT

A motion was made by Member Hanneman, seconded by Member LaCosse, to adjourn the meeting. Ayes were unanimous.

The meeting adjourned at 6:52 p.m.

Jon Liss, Chairperson
Escanaba Zoning Board of Appeals

Blaine DeGrave, Ex-Officio
City of Escanaba