

**ESCANABA ZONING BOARD OF APPEALS
ROOM C101, CITY HALL, ESCANABA, MI
OCTOBER 22, 2014**

A regular scheduled meeting of the Escanaba Zoning Board of Appeals was held on Wednesday, October 22, 2014, at 6:30 p.m. in Room C101, City Hall, 410 Ludington Street, Escanaba, MI 49829.

PRESENT: Boardmember Jon Liss, Judi LaCosse, Nathan Gauss and Dennis Renken

EXCUSED: Philip Strom and Joe Klem

ALSO PRESENT: City Council Member Liaison Ralph Blasier, Ex-Officio Blaine DeGrave, and Executive Secretary Kim Peterson

The meeting was called to order at 6:30 p.m. by Blaine DeGrave.

ROLL CALL: Kim Peterson conducted the roll call.

Approval/Corrections to the February 27, 2013, meeting minutes

A motion was made by Boardmember Liss, seconded by Boardmember Gauss, to approve the February 27, 2013, meeting minutes. Ayes were unanimous.

Approval/Adjustments to the Agenda

None.

A motion was made by Boardmember LaCosse, seconded by Boardmember Liss, to approve the meeting agenda. Ayes were unanimous.

Conflicts of Interest Declaration

None.

UNFINISHED BUSINESS

None.

NEW BUSINESS

Election of Officers

A motion was made by Boardmember LaCosse, seconded by Boardmember Renken, to nominate Jon Liss for Chairman. Ayes were unanimous.

A motion was made by Boardmember Renken, seconded by Boardmember LaCosse, to nominate Nathan Gauss for Vice Chairman. Ayes were unanimous.

PUBLIC HEARING

Public Hearing – 1300 South 15th Street – Variance Request – Zoning Ordinance

Chairperson Liss stated a hearing is brought forward from Ray and Shirley Gollach for a variance to Section 505.2.1. Minimum Side Yard Requirements of the Escanaba Zoning Ordinance.

Ex-Officio DeGrave stated a hearing on a request from the Ray and Shirley Gollach, 1300 South 15th Street, Escanaba, MI 49829, for a variance to Section 505.2.1 Minimum Side Yard Requirements of the Escanaba Zoning Ordinance. The appellants are requesting a variance be granted which would allow them to construct an attached garage onto the main structure which would encroach into the minimum side yard space. Present zoning is Single Family Residential District “A”.

Staff Comment:

In accordance with the City of Escanaba Zoning Ordinance, Section 505.2.1 the minimum side yard for residential structures is required to be 10% of the width of the lot with a total of 25% of the lot required for both side yards; provided, however, that no side yard shall have a width of less than 4 feet and this shall be increased by 4 feet for each story by which a building erected on a lot exceeds 2 stories in height. And, provided however that no minimum interior side yard shall be required to exceed 15 feet nor shall the total side yards be required to exceed 45 feet.

Because a minimum side yard on the 12th Avenue South side of the dwelling must be at least 14’ from the building edge to property line and only 8.6 feet is being proposed, a variance would be required.

Proposed Finding of Fact:

1. All fee and notification requirements of the Zoning Ordinance have been accommodated.
2. Ray and Shirley Gollach are the owners of the property for the record.
3. The parcel in which the variance is being requested is zoned Residential “A” – Single Family.
4. Rear yard calculations indicate that a detached garage could be constructed on the property without the need for a variance.

Board Role and Responsibilities:

In accordance with Chapter 3, Board of Zoning 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 premises. If there are practical difficulties or unnecessary hardship 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 Board of Appeals has the power to authorize specific variances or departures from the Zoning Ordinance, if all the basic conditions are satisfied, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the law. A variance from the 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.

In accordance to the Michigan Association of Planning: Excerpted from the presentation "Practical Difficulty and Unnecessary Hardship," Academy 202 Workshop, a Practical Difficulty and Unnecessary Hardship are defined to be:

1. The property cannot be reasonably used as zoned.
2. There are unique circumstances related to the property.
3. Proposed use would not alter the essential character of the area.
4. Not a self-created hardship.
5. Not impair the intent and purpose of the Ordinance or the Master Plan.
6. Results when the character of a lot or parcel prevent the use (or reasonable use) of said lot or parcel as currently zoned. Unnecessary hardship is demonstrated through a series of applied standards.
7. Zoning is expected to support a reasonable rate of return on one's investment, but not necessarily the highest.

Owner/Applicant Demonstration of a Hardship:

Ray and Shirley Gollach will be required to demonstrate that the following basic conditions have been addressed/met/demonstrated before a variance can be considered:

- A. The spirit of the Zoning Ordinance 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.
- 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.
- 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 Code.
- G. The alleged hardship or difficulty is not solely economic, and is based on the reasonable use of a particular parcel of land.
- 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 to or in concert with the applicant.

Staff Recommendation:

The Board of Appeals does not have the authority to alter or change the requirements of the Zoning Ordinance without first establishing that the aforementioned demonstrations of hardship exists and that the situation is not self-created. 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 it is believed that a detached garage could be constructed without the need for a variance in the rear yard. The Board of Appeals must determine if there is a hardship or difficulty which is not a result of an act, created or inherited by the owner and is not solely economic in nature.

Enforcement History: None.

Back-up Information:

1. Property Owner/Occupant Letter Within 300' Radius.
2. 300' Radius Labels.
3. EBA Application.
4. Assessor Information.

Ray and Shirley Gollach appeared before the Boardmembers. They stated they purchased the home for which they are asking the variance three years ago after living in Ford River for the previous twenty-five years. The primary attraction of this particular piece of property was the yard, which is a corner lot with a rear yard that borders on the Escanaba Country Club. They feel the need for additional space in order to prevent their yard and the street around them from being overrun with vehicles, trailers and the like. They have considered other alternatives, including the addition of a storage shed

in the back yard. Although this would help to resolve at least a portion of the problem inexpensively, it would also block much of the view in the back yard and would be visible from the street given that this is a corner lot. They have a twenty foot utility easement on the back of the property and anything built there would essentially be in the middle of the yard. Although more costly, they feel the addition to the garage would be more aesthetically appropriate both to this particular property and to the neighborhood. The property is unique in that it is a corner lot with neither a side yard sidewalk or an alley. The side yard where the addition would be built borders on 12th Avenue South, which is a cul-de-sac ending at the Escanaba Country Club. It is highly unlikely that a sidewalk would ever be put in on the side of the house, given that this is the only house on the block of 12th Avenue South and the fact that it would necessitate the removal of several mature trees. The variance, if granted, would still leave a setback of 8'6" to the property line and another 25' to the edge of the street, leaving plenty of room for walkers and for traffic visibility. A home directly across 12th Avenue South from this property has a setback of almost nothing, with the home's front steps being only a foot or so from the sidewalk. The utility pole is located in the rear of the property near the alley easement, so no City utilities or services would be affected. They feel the requested variance would not have a negative impact, but would have a significant positive one by allowing them to improve the appearance of both their property and the neighborhood as a whole.

Mrs. Gollach submitted a list of thirteen property owners within the area stating they have no objections to the variance request. (attached to meeting minutes)

Discussed the property being unique and located on a corner lot with a cul-de-sac. The Escanaba Country Club is down a dead end road with no outlet available. Discussed if a garage was built in the back yard as detached then a curb cut would be needed to get access to such.

Discussed sidewalks being placed in the area then the Escanaba Country Club would have to remove their fence to erect such sidewalk.

Boardmember Renken stated that the aesthetic to the neighborhood is important and didn't believe a detached garage in the middle of the back yard would be appropriate.

Ex-Officio DeGrave stated the Zoning Ordinance is in place for a reason and there are requirements. Even though the attached garage would be more aesthetically pleasing, there is no hardship.

Boardmember Renken stated he believed the hardship would devalue the property, in his opinion.

Boardmember LaCosse stated this is the process of variances to look at rules and regulations that don't fit every property.

Boardmember Gauss asked if there would still be room if sidewalk construction did take

place in the near future. Everyone agreed that there would still be enough room to construct sidewalks. There is an easement and would remain as such. No utility issues would take place if this attached portion was erected to the current garage.

The Boardmembers agreed there would be a nuisance with having vehicles and trailers parked on the street and in the yard. A detached garage in the middle of the back yard would not be aesthetic to the neighborhood and could devalue properties within said neighborhood. This property is a unique piece of property within the City with being located on a corner lot with a cul-de-sac. No utilities or sidewalk construction would interfere with such construction. The Boardmembers further agreed that the owner demonstration of a hardship would include Sections A – G as mentioned.

A motion was made by Boardmember Renken, seconded by Boardmember LaCosse, to approve the variance request to Ray and Shirley Gollach of 1300 South 15th Street to Section 505.2.1. Minimum Side yard Requirements of the Escanaba Zoning Ordinance to allow 8'6" side yard on the 12th Avenue South side of the dwelling. Ayes were unanimous.

NEW BUSINESS

Public Comment

There were no public comments.

Member/Staff Comments and Announcements

There were no member/staff comments or announcements.

Adjournment

A motion was made by Boardmember LaCosse, seconded by Boardmember Renken, to adjourn the meeting with the time being 7:01 p.m. Ayes were unanimous.

Jon Liss, Chairperson
Escanaba Zoning Board of Appeals

Blaine DeGrave, Ex-Officio
City of Escanaba