

**ESCANABA ZONING BOARD OF APPEALS
ROOM C101, CITY HALL, ESCANABA, MI
WEDNESDAY, OCTOBER 18, 2017**

A meeting of the Escanaba Zoning Board of Appeals was held on Wednesday, October 18, 2017, at 6:00 p.m. at the City Hall, 410 Ludington Street, Escanaba, MI 49829.

PRESENT: Chairman William DeHaan, Vice-Chairperson Jon Liss, Members: Mark Hannemann, Brian Thorsen, and Dennis Renken, Code Official Blaine DeGrave, and Executive Assistant Lisa Glish

ALSO PRESENT: Michael Pryal – Owner of 700 Bay Street, Ralph Blaiser – Owner of 700 Lake Shore Drive, Lance Collins – Owner of 706 Bay Street, and Donald Mlostek and Sandra Szapa - Owners of 3030 Lakeshore Drive.

ABSENT: Member Joe Klem

Meeting called to order at 6:00 p.m. by Chairman William DeHaan

ROLL CALL

Executive Assistant Lisa Glish conducted the roll call.

APPROVAL/CORRECTION OF THE JUNE 6, 2017 BOARD OF APPEALS MINUTES

A motion was made by Member Thorsen, seconded by Vice-Chairperson Liss, to approve the June 6, 2017 meeting minutes as submitted. Ayes were unanimous.

APPROVAL/ADJUSTMENTS TO THE OCTOBER 18, 2017 BOARD OF APPEALS AGENDA

A motion was made by Vice-Chairperson Liss, seconded by Member Hannemann, to approve the October 18, 2017 meeting agenda as submitted. Ayes were unanimous.

CONFLICT OF INTEREST DECLARATIONS

None.

UNFINISHED BUSINESS

None.

PUBLIC HEARING

1. Public Hearing – 700 Bay Street – Dimensional Variance

Blaine DeGrave stated that a public hearing on a request from Michael Pryal, owner of 700 Bay Street, Escanaba, will take place for a Dimensional Variance to Section 505.2.1 – Minimum Side Yard of the City of Escanaba’s Zoning Ordinance. The applicant is requesting to reduce the side yard setback from seven (7) feet to one (1) foot.

Blaine followed by reading the administration’s position paper into record:

**CITY OF ESCANABA
BOARD OF APPEALS
OCTOBER 18, 2017**

CASE: EBA101217-01

APPLICANT: Michael Pryal
700 Bay Street, Escanaba, MI 49829

STAFF CONTACT: Blaine R. DeGrave
Code Official, City of Escanaba
410 Ludington Street, Escanaba, MI 49829
(906) 786-9402 - Email: bdegrave@escanaba.org

REQUEST:

A hearing on a request from the Michael Pryal of 700 Bay Street, Escanaba, for a variance to 505.2.1 Minimum Side Yard Requirements of the Escanaba Zoning Ordinance. The appellant is requesting a variance be granted which would allow him to enlarge a detached garage which would encroach into the minimum side yard space.

LOCATION:
700 Bay Street, Escanaba, MI 49829

PRESENT ZONING:
Single Family Residential District "A"

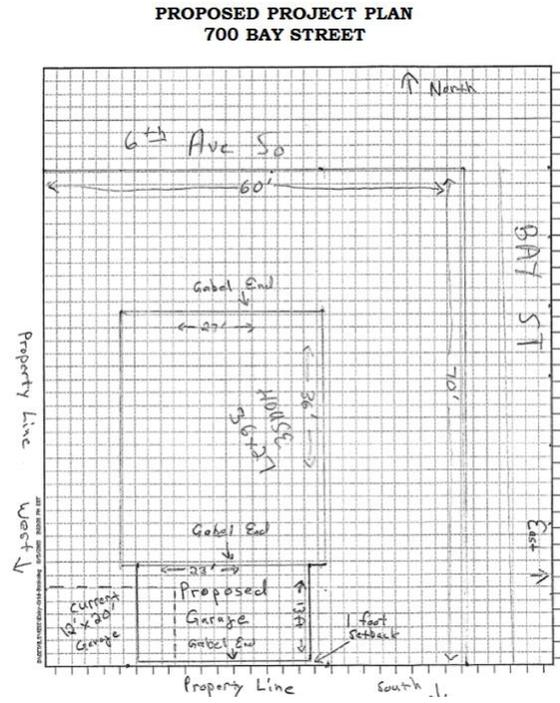
STAFF COMMENT:

In accordance with the City of Escanaba Zoning Ordinance, Section 505.2.1 Minimum Side Yard Requirements, 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 the required side yard setback requirement cannot be met, as being proposed, a variance would be required.

PROPOSED FINDING OF FACTS:

1. All fee and notification requirements of the Zoning Ordinance have been accommodated.
2. Michael F. Pryal is the owner of the property for the record.



3. The parcel in which the variance is being requested is zoned Residential “A” – Single Family.

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:

Mr. Pryal 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 RECOMMENDATIONS:

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. 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.

In the case of the application it is believed that the granting of a variance would be in line with the basic conditions required for a variance request and that such installation would not have a detrimental impact to the surrounding neighborhood.

ENFORCEMENT HISTORY:

None.

BACK-UP INFORMATION:

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

Michael Pryal, owner of 700 Bay Street, addressed the Board explaining that his intention is to remove the old garage that is currently on the property that is too small to accommodate his current vehicle and replace it with a larger garage that would fit his needs better and be more appealing to the neighborhood. He went onto explain that the lot he has is half the size of a regular city lot and it doesn't give him a lot of room to build what he wants with the current setback requirements; he then stated he was there requesting the setback be lessened for his property to be one (1) foot from the South property line.

Ralph Blaiser, owner of 700 Lake Shore Drive, addressed the Board and stated that if the owner would move the planned 13' wide garage to the north side of the property the setback would be 6.5 ft from the property line.

Lance Collins, owner of 706 Bay Street, address the Board and stated that he is the property owner directly next to Mr. Pryal's property and stated that he has no immediate issues with the construction of the new garage. Mr. Collins stated that he was concerned/wondered that if the variance is granted, would he be able to apply or be given the same allowance as Mr. Pryal in the future. Chairperson DeHaan stated that each variance is specific to a specific property, and Mr. Collins would need to apply for a variance in the future just like Mr. Pryal submitted.

Member Renken questioned when the land was platted, and stated that it is a very small lot with a size of only 60' x 70'.

Michael Pryal responded that the home was built in 1923, and was probably platted sometime in the 1890s.

Chairperson DeHaan stated that he reviewed the proposal and finds that the proposed use of the property is not being changed, nor is the non-conformancy changing that the current garage has already established due to the setbacks for that.

A motion was made by Chairperson DeHaan, seconded by Member Renken to grant the Dimensional Variance to allow the side yard setback for the property located at 700 Bay Street be decreased to one (1) foot.

Vice-Chairperson Liss stated that he also understood Mr. Collins' worries and was asking if that setback would be to the foundation or the eaves of the new garage.

Michael Pryal stated that it would be to the eaves, and he plans to pitch the roof drainage away from Mr. Collins' property.

Member Hannemann questioned if the garage could be physically moved to a different location?

Michael Pryal stated that no matter where he does it on the property he would need some type of variance due to the property size.

Member Renken stated that the garage probably would not be logical in a different location than where he is currently planning due to how Mr. Pryal wants to attach it to his home.

A rollcall vote was called for by Chairperson DeHaan, votes were as follows:

Chairperson DeHaan – Aye

Vice-Chairperson Liss – Aye

Member Thorsen – Aye

Member Renken – Aye

Member Hannemann - Aye

Chairperson DeHaan stated that the motion passed during rollcall vote with unanimous Aye votes and that the variance is granted.

2. Public Hearing – 3030 Lake Shore Drive – Use Variance

Blaine DeGrave stated that a public hearing on a request from Donald Mlostek and Sandra Szapa, owners of 3030 Lake Shore Drive, Escanaba, will take place for a Use Variance to Section 509.2 – Front Yard Space of the city of Escanaba's Zoning Ordinance. The applicants are requesting approval for construction of a detached garage in the front yard space of the property.

Blaine followed by reading the administration's position paper into record:

**CITY OF ESCANABA
BOARD OF APPEALS
OCTOBER 18, 2017**

CASE: BOA101817-02

APPLICANT: Donald Mlostek and Sandra Szapa
3030 Lakeshore Drive
Escanaba, MI 49829

STAFF CONTACT: Blaine R. DeGrave
Code Official, City of Escanaba
410 Ludington Street
(906) 786-9402 - Email: bdegrave@escanaba.org

REQUEST:

A hearing on a request from Donald Mlostek and Sandra Szapa for a Use Variance from Zoning Ordinance Requirements in accordance with Chapter 5. Residence "A" Districts, Sections 509.2 Front Yard Space of the City's Zoning Ordinance.

Mr. Mlostek and Ms. Szapa are requesting a Use Variance be granted which would allow them to build a detached garage at the property within the front yard space.

LOCATION:

3030 Lakeshore Drive, Escanaba, MI 49829

PRESENT ZONING:

Residence "A" District.

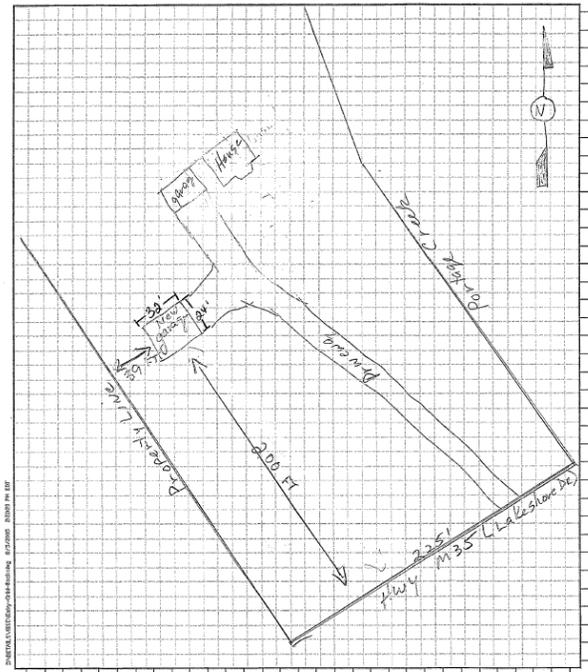
STAFF COMMENT:

The City of Escanaba Zoning Ordinance, **Section 509.2 Front Yard Space**. A detached accessory building and/or private garages may not occupy front yard space.

In the application for the Board of Appeals, the appellant is requesting a Dimensional Variance be granted which would allow them to construct a 24x32 detached garage in the front yard space of the property located at 3030 Lakeshore Drive. A dimensional variance Section 305.6.1, may be sought if a practical difficulty shall exist where there are exceptional or extraordinary circumstances or physical conditions, such as narrowness, shallowness, shape or topography of the property involved, that do not generally apply to other property or uses in the same zoning district.

PROPOSED FINDINGS OF FACTS:

1. Mr. Mlostek and Ms. Szapa are the owners of record for the property located at 3030 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 Monday, October 2, 2017 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 with 300 feet of the property indicating the nature of the appeal and the date of the hearing on September 28, 2017. A meeting notice was also placed on the City Website and on the City Facebook page.
4. On September 26, 2017 Mr. Mlostek and Ms. Szapa 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) Lot is 4.99 Acres and the garage would be in the wooded front yard 200' from the road and 39' from the neighbor's property line and would not be unsightly or interfere with anything.

- (b) (Question) DESCRIBE WHY THIS PROBLEM IS NOT SELF-CREATED:

(Answer) A concrete pad already exists that will be used for the approach to the new garage, so we wanted to utilize what had already existed. Also due to a creek it is difficult to put a structure in the back yard.

- (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) wooded lot in the city limits of 4.99 acres.

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:

- 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.
- 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 Ordinance.
- 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 or concert with the applicant.

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.

STAFF RECOMMENDATIONS:

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 be properly served and that the placement of the detached garage within the front yard space is a reasonable use due in part to:

- 1) The size of the lot, which is not a standard city lot. (Acreage instead of sq. ft.)
- 2) The location of the lot, which is outside of the general plotted lots of the City of Escanaba.
- 3) The size of the front yard. 200 ft.+/- to the road frontage.
- 4) The existing concrete pad may be utilized if place within the front yard.
- 5) The literal interpretation of the provisions of these documents could deprive the property owner of rights commonly enjoyed by other properties in the same district.

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.

ENFORCEMENT HISTORY:

None.

BACK-UP INFORMATION:

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

Sandra Szapa, owner of 3030 Lake Shore Drive, addressed the board explaining that the reason they are asking for a variance is so that they can build a new garage in front of their house. She went onto explain that two of the main reasons they are requesting the variance. 1.) The terrain behind their home is virtually unbuildable due to the terrain and the creek that flows next to their property, and 2.) The concrete approach for the new garage is already in place. She went onto explain that the approach is actually their turn around pad in their yard, and they feel as though that area would make a great space to add the garage since that concrete is already existing. Sandra then went onto explain that their property is not measured in feet like a normal city lot, theirs is measured in acres.

Member Thorsen stated that he believes if the garage is built where it is being proposed it probably wouldn't be seen very easily from the road anyway due to it being hidden to some degree by trees since that area is wooded.

Vice-Chairperson Liss stated that he doesn't see any issues due to the size of the lot and that the garage will be pushed back out of view.

Member Renken stated that he didn't see any problems with the build.

Member Hannemann stated that he didn't see any issues either.

Chairperson DeHaan stated that he agrees with the observations made by the administration and he feels as though this proposed use is reasonable and the new garage would not affect the neighbors.

A motion was made by Chairperson DeHaan, seconded by Vice-Chairperson Liss to grant the Use Variance to allow the construction of a detached garage in the front yard space of the property located at 3030 Lake Shore Drive.

A rollcall vote was called for by Chairperson DeHaan, votes were as follows:

Chairperson DeHaan – Aye

Vice-Chairperson Liss – Aye

Member Thorsen – Aye

Member Renken – Aye

Member Hannemann - Aye

Chairperson DeHaan stated that the motion passed during rollcall vote with unanimous Aye votes and that the variance is granted.

ADJOURNMENT

A motion was made by Chairperson DeHaan, seconded by Vice-Chairperson Liss, to adjourn the meeting. Ayes were unanimous.

The meeting adjourned at 6:45 p.m.

William DeHaan, Chairperson
Escanaba Zoning Board of Appeals

Blaine DeGrave, Ex-Officio
City of Escanaba