

**ESCANABA ZONING BOARD OF APPEALS  
ROOM C101, CITY HALL, ESCANABA, MI  
WEDNESDAY, NOVEMBER 2, 2016**

A meeting of the Escanaba Zoning Board of Appeals was held on Wednesday, November 2, 2016, at 6:00 p.m. at the City Hall, 410 Ludington Street, Escanaba, MI 49829.

**PRESENT:** Members Brian Thorsen, Joe Klem, Mark Hannemann, William DeHaan, Dennis Renken, Code Official Blaine DeGrave, and Executive Assistant Lisa Glish

**ALSO PRESENT:** Ed Dwyer (Property Owner of 316 South 3<sup>rd</sup> Street) and Mike Harris

**ABSENT:** Chairperson Jon Liss

Meeting called to order at 6:00 p.m. by Code Official Blaine DeGrave

**ROLL CALL**

Executive Assistant Lisa Glish conducted the roll call.

**APPOINTMENT OF TEMPORARY CHAIR**

**A motion was made by Member Renken, seconded by Member Hannemann, to appoint Member William DeHaan as Temporary Chair due to the absence of Chairperson Jon Liss for the meeting. Ayes were unanimous.**

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

**A motion was made by Temporary Chairperson DeHaan, seconded by Member Renken, to approve the June 14, 2016 meeting minutes as submitted. Ayes were unanimous.**

**APPROVAL/ADJUSTMENTS TO THE AGENDA**

Blaine DeGrave stated that there was to be one correction to the Agenda, “Unfinished Business – 1. Election of Chairperson and Vice Chairperson” needed to be removed due to this appointment cannot be made until the first meeting of the new year.

**A motion was made by Member Renken, seconded by Member Hannemann to approve the November 2, 2016 meeting agenda with correction. Ayes were unanimous.**

**CONFLICT OF INTEREST DECLARATIONS**

Temporary Chairperson DeHaan stated that he knows of Edward Dwyer, owner of the property in question at 316 South 3<sup>rd</sup> Street through family, but he has never met nor knows him personally. Temporary Chairperson DeHaan noted that he feels he has no conflict of interest with this case, but wanted it on record.

**UNFINISHED BUSINESS**

None.

## **PUBLIC HEARING**

Blaine DeGrave stated a request has been made by Edwin and Crystal Dwyer of 316 South 3<sup>rd</sup> Street, Escanaba, MI for a dimensional variance to Section 505.2.1 Minimum Side Yard and 505.3.1 Minimum Rear Yard Requirements. The appellant is requesting a rear yard and side yard setback dimensional variance which would allow them to enlarge the existing garage by 110 sq. ft. for the installation of a wider garage door.

Blaine DeGrave read the Case Position Paper into record as follows:

**CITY OF ESCANABA  
BOARD OF APPEALS  
November 2, 2016**

**CASE:** EBA110216-01

**APPLICANT:** Edward and Crystal Dwyer  
316 South 3<sup>rd</sup> 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 Edward and Crystal Dwyer, owners of 316 South 3<sup>rd</sup> Street, Escanaba, for a variance to Section 505.3.1 Minimum Rear Yard Requirements and 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 enlarge an attached garage which would encroach into the minimum rear and side yard space.

**LOCATION:** 316 South 3<sup>rd</sup> Street, Escanaba, MI 49829

**PRESENT ZONING:** Single Family Residential District "A"

**STAFF COMMENT:**

In accordance with the City of Escanaba Zoning Ordinance, Section 505.3.1 Minimum Rear Yard Requirements, a minimum 20' is required in depth as measured at right angles from the rear lot line to the nearest part of the principle building on each lot upon which a one (1) story principal building is located and 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 rear yard and side yard setback requirements cannot be met, as 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. Edwin and Crystal Dwyer 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.

## **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**

Edwin and Crystal Dwyer 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 privy 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 400' Radius.
- 2. 400' Radius Labels.
- 3. EBA Application.
- 4. Assessor Information

Edward Dwyer, property owner of 316 South 3<sup>rd</sup> Street started by thanking Blaine DeGrave and the rest of the staff at City Hall for all of the help throughout the Appeals process.

Edward Dwyer went on to explain the reason he is requesting the variance is to add up to 5' to his garage towards the south. He does not feel as though this would have an adverse impact on the neighborhood, or the value of the neighborhood. Dwyer went on to state that the alley behind the garage is extremely narrow and very difficult to park in the garage, that it sometimes takes a bit of maneuvering to get a vehicle in it. He then stated that the home is for sale and the potential buyer is very interested in the property, but she would need the garage to be larger before agreeing to the purchase.

Blaine DeGrave directed the Board of Appeals to photos of the property in the agenda packet, showing them the area where the variance would be applied to the property.

Mike Harris from State Wide Real Estate mentioned he was there as a representative for the potential owner, and that the offer for the sale/purchase of the property depends upon if the variance would be granted or not.

Mike Harris read a letter from Darleen LaPalm, whom is the potential buyer for the property...

“Thank you for your time, the home is old and has the old very small one-car garage. The entry is through the alleyway because it is attached to the house; there is not much room to maneuver an automobile in its approach. To make matters worse, the lot itself is very small, again not allowing maneuvering space. If allowed, the 5’ would make a world of difference, especially in the winter with snow buildup. I was not able to get my car in the garage without the help of three (3) men guiding me... ‘Turn sharply’, ‘No, backup and try again’, ‘Almost got it’. This will not impact any neighbors.

Thank You,  
Darleen LaPalm”

Mike Harris went on to state that Miss LaPalm is originally from the area and she has been looking for a home close to the park area, and that she is pretty adamant that she will not purchase the home if a variance cannot be granted. Harris went onto state the with his profession in Real Estate, he doesn’t feel as though this variance would be detrimental to anyone.

Ed Dwyer added that during the winter when the snow plows come through, and snow piles up in that area, and makes it almost impossible to get a vehicle into the garage. He stated that he strongly asks the Board to approve this variance.

Temporary Chairperson DeHaan asked for comment from the Board.

Member Thorsen had no issues.

Member Klem asked how they would plan on doing the addition. Mike Harris stated that they would be removing the southern wall and extending it over 5’, and in addition putting in a 12’ garage door.

Member Hannemann had no issues.

Temporary Chairperson DeHaan stated that this is the site of the old Tilden House, and non-conforming to the current code. He mentioned that he does not feel as though this 5’ would not be detrimental, and that it would correct a hardship caused by the current code.

**A motion was made by Member Renken, seconded by Member Thorsen, to grant the variance as requested. Ayes were unanimous.**

No other comments were made.

Blaine DeGrave welcomed Member Brian Thorsen to the Board. DeGrave went on to state that when/if the Board is called next year the appointment of the Chairperson and Vice-Chairperson will be conducted will be done at the first meeting.

**ADJOURNMENT**

Temporary Chairperson DeHaan adjourned the meeting at 6:25 p.m.

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Jon Liss, Chairperson  
Escanaba Zoning Board of Appeals

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Blaine DeGrave, Ex-Officio  
City of Escanaba