

HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
November 13, 2002

The Zoning Board of Appeals hearing was called to order by chair Jim McMahon at 7:30 p.m.

Members present were Jim McMahon, Fred Parsons, Brad Kessler, and Marlene Golovich. Also present were Lisa Zipp, Ethel Knepp, and Francie Martin.

The purpose for the meeting being called was to hear a request from C.T. and Francie Martin for a variance from Section 6, subparagraph (d) of the Township Parcel Division Ordinance which requires any resulting parcel to have a depth of not more than four (4) times its width. C.T. and Francie Martin are proposing to create a resulting parcel of 7.336 acres from property tax number 15-07-130-001-00 with an average width of 202 feet and depth of 1587 feet. Zone District R-1, Residential, Single Family. The proposed new parcel shall herein be referred to as Parcel B.

Ethel Knepp stated she received an e-mail from Dan and Robin Singer and a phone call from Charles Koucky, adjacent properties owners. They both had no objection and approved of the parcel division.

Francie Martin explained that she and her husband, C.T. Martin, wish to divide the property as proposed in order to sell Parcel B. There are no structures on Parcel B. Francie and C.T. own the residence on the adjacent Parcel (Parcel A, per survey by John Ferguson dated 10-4-82, job no. SB-1089c-82) along with 3 guest cabins. They wish to sell the land as one parcel rather than dividing it into 2 parcels, as required by the aforementioned ordinance to meet the width to depth ratio. Francie explained the front of parcel (lakefront) cannot support a septic system and any septic system installed would have to be pumped to the back of the parcel (road front). She submitted a report from Larry Levensgood, Environmental Health County Supervisor regarding the septic system and also estimated depth of well. If the two new parcels were created, their would also need to be additional easements created to gain access to the lake parcel through the road parcel and also so the lake parcel could pump the septic back to a drainfield on the road parcel. Francie stated they are very protective of this land and would rather only have one residence on the parcel rather than two. It is also their intent to sell this parcel with deed restrictions some of which to specify only allowing one residence and no further splits on Parcel B. Parcel B has no structures on it.

Jim McMahon stated he had walked the property and also noted the location of the nearby structures. One cabin was near the section line of 19 and 30. Francie Martin said the other two guest cabins were clearly located on section 30. Jim said that no structure appeared to be closer than 100 feet to the proposed newly created north property line of Parcel B. There is a neighboring home to the south of the existing property line.

ZONING BOARD OF APPEALS MINUTES - MARTIN HEARING November 13, 2002

Jim stated concern about retaining much of the natural habitat on the property. Much of the property is wooded and looks to be in a "wild" state and it would be desirous to maintain much of the existing habitat. He noted that he saw a pair of mating swans during his visit. He noted there was much growth in the water near the shoreline such as cattails and high weeds. He mentioned the Shoreline Protection act which requires the first 50 feet back from the waterline to remain wooded. Ethel Knepp stated that is an issue for when building permits are asked for. She suggested seeing pictures of the property before issuing the building permits.

Fred Parsons asked that other than the increased cost to the buyer, if it were possible to split off 400 feet of the lake front property in order to meet the 4 to 1 ratio. Francie responded that they do not wish to sell that much of the property. In addition, that would be too close to one of the guest cabins or possibly including it.

Jim McMahon stated none of the structures were shown on the survey. Ethel stated that structures are not required to be shown on the survey except on the parcel being created.

Jim McMahon proceeded with the requirements of land divisions and noted this property is zoned R-1. The 200 foot width requirement has been met and the minimum acreage of 2 acres has also been met.

Marlene Golovich stated her concern that a future buyer could further divide this parcel even if this variance is granted. Jim McMahon asked if it was possible to restrict further division of the parcel. Ethel Knepp stated absolutely not - that would be considered "taking,"- but that would be something the Martin's could put on as a deed restriction to the buyers of the Parcel B if they so desired. Francie Martin said that it is their intent to do so. Ethel Knepp stated that this parcel division is clearly allowed under the variance provisions granted by Section 7.

Marlene Golovich made a motion, supported by Fred Parsons, to grant a variance from Section 6, of the Township Parcel Division Ordinance to allow the division of Parcel B per survey by John Ferguson dated 10-4-82 Job No. SB-1089c-82, based on the following findings of fact:

Chair Jim McMahon read the criteria from the Zoning Ordinance Section 7, Land Configuration Variances:

Variance from Section 6, subparagraph (d) of the Hayes Township Parcel Division Ordinance, which states "Each new lot, parcel, or tract of land that will result from the division, including those lots, parcels, and tracts of land greater than ten (10) acres, shall have a depth of not more than four (4) times its width as measured under the requirements of the Hayes Township Zoning Ordinance. This standard shall not apply to a property transfer".

The property involved is approximately 75 acres in Sections 19 and 30 with the application to split 7.336 acres of property off the South end labeled "Parcel B". The resulting parcel would

ZONING BOARD OF APPEALS MINUTES - MARTIN HEARING November 13, 2002

involve a width at Lake Charlevoix of 203.36 feet and 200.02 feet at See Road. The longest depth would be 1619.26 feet running west to east on the north boundary line which is 7.96 times the width.

Section 7. Land Configuration Variances.

- a. If a lot, parcel, or tract of land that will result from a division or property transfer does not meet the requirements of the Hayes Township Zoning Ordinance as specified in Section 6(b) of this Ordinance, then the Applicant may seek a variance from those zoning requirements from the Zoning Board of Appeals pursuant to the procedures of the Hayes Township Zoning Ordinance.
- b. If a lot, parcel, or tract of land that will result from a division does not meet the depth to width requirements of Section 6(d) of this Ordinance, then the Applicant may seek a variance from those requirements from the Zoning Board of Appeals pursuant to the procedures of this section.
- c. The Zoning Board of Appeals may grant a variance under this Ordinance from the depth to width requirement of Section 6(d) of this Ordinance, if all of the following exist:

1. Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographical or physical conditions, that do not generally apply to other lots, parcels, or tracts of land in the township.

The board finds this to be true. If Parcel B is split into two (2) three plus acre parcels in order to meet the depth to width requirements of Section 6(d), the Health Department has indicated that the drainfield would have to be located on the parcel fronting See Road. They will not allow the septic system to be located on the lakefront parcel which will require easements granting access to the drainfield from one parcel to the other one.

This property is zoned R-1 which is a two (2) acre lot area requirement and a two hundred (200) feet width requirement.

2. The exceptional or extraordinary circumstances or conditions existing on the parent parcel are not the result of any act or omission by the Applicant or his or her predecessors in title.

The board finds this to be true. The exceptional circumstance is that the parcel that is resulting from the split is much larger than is required. Rather than subdividing this parcel twice it is desirable to be allowed to have a long narrow piece of property without increasing the allowed density. The applicant is not

ZONING BOARD OF APPEALS MINUTES - MARTIN HEARING November 13, 2002

splitting the parcel as indicated on the survey unless a variance is granted.

3. The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels, or tracts of land or to the general health, safety, and general welfare of the township.

The board finds this to be true. Granting of the variance would not be injurious or otherwise detrimental to adjoining lots, parcels, or tracts of land as the lot size being created is larger than the ordinance requires therefore reducing density, traffic, etc. that could occur if the property was split to the minimum lot size.

The purpose of the ordinance(s) is to encourage the use of lands in accordance with their character and adaptability and to limit the improper use of land, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building and population development.

By not splitting this property to the maximum density allowed, the parcel will enhance the purpose for which zoning is adopted and will promote the health, safety and welfare of the township.

4. The resulting lots, parcels, or tracts of land with the variance granted shall be compatible with surrounding lots, parcels, or tracts of land.

The board finds this to be true. The resulting parcel will be compatible with the surrounding properties because it's use will be residential which is the same as the adjacent properties.

5. The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.

The board finds this to be true. The variance granted is the minimum variance necessary to split any property off the larger parcel.

- d. The Zoning Board of Appeals shall follow the procedures of the Hayes Township Zoning Ordinance relating to variances when deciding whether to grant a variance under this section.

The Hayes Township Zoning Ordinance has no provision for a depth to width ratio in any

ZONING BOARD OF APPEALS MINUTES - MARTIN HEARING November 13, 2002

zone district. Therefore the Zoning Ordinance Section 7.05 C should not apply to this variance request.

- e. In granting any variance under this Ordinance, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in order to ensure that the lot, parcel, or tract of land that will result from the division or property transfer complies with the variance granted under this Ordinance. Violations of such conditions and safeguards shall be deemed a violation of this Ordinance, punishable under Section 9 of this Ordinance.

ROLL CALL VOTE;

AYES: Brad Kessler, Marlene Golovich, Jim McMahon, Fred Parsons.

MOTION CARRIED.

Fred Parsons made a motion to adjourn, supported by Marlene Golovich. Without objection the meeting was adjourned at 8:25 p.m.

ZONING BOARD OF APPEALS MINUTES - MARTIN HEARING November 13, 2002

HAYES TOWNSHIP ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: C.T. & Francie Martin

Hearing Date: November 13, 2002

The property is identified by the tax number 15-07-130-001-00. Hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on November 13, 2002, after giving due notice as required by law, the Board having heard the statements of the Applicant, the Board having heard from two adjacent neighbors, and the Board having considered the following exhibits:

1. A Zoning Application dated October 12, 2002;
2. A memo from Ethel Knepp to Zoning Board of Appeals dated October 18, 2002;
3. A site plan;
4. A notice of hearing;
5. An e-mailed letter from neighbors, Dan and Robin Singer, dated October 27, 2002;
6. A letter from Larry Levengood of the Northwest Michigan Community Health Agency.

GENERAL FINDS OF FACT

1. The Board finds that the proposed property to be split is approximately 203.36 feet wide at Lake Charlevoix and has a depth of approximately 1619.26 feet which is 7.96 times the width. The proposed newly created parcel shall herein be referred to as Parcel B.
2. The Board finds that the current zoning ordinance requires resulting parcels to have a length that is not more than four (4) times its width.
3. The Board finds that if the proposed property is split into 2 parcels to meet the 4/1 ratio requirement of depth/width, the health department has indicated they will not allow the septic system to be located on the lakefront parcel. This will require easements granting access to the drainfield from one parcel to another in addition to an easement for ingress and egress.
4. The Board finds that the parcel resulting from the split of 7.96 acres is much larger than required.
5. The Board finds that it is desirous to have one long narrow piece of property rather than increasing the allowed density by splitting it into 2 pieces.

ZONING BOARD OF APPEALS MINUTES - MARTIN HEARING November 13, 2002

6. The Board finds that the resulting parcel will compatible with the surrounding properties and would not be injurious or otherwise detrimental to adjoining parcels.

The Board approves the findings from Section 7 of the Zoning Ordinance and the Board approves a variance from the Section 6(d) of the Hayes Township Zoning Ordinance for property tax number 15-07-130-001-00 to allow the division of Parcel B per survey by John Ferguson dated 10-4-82 Job No. SB-1089c-82.

01/13/03 Minutes approved as corrected.