

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
JOE RIVARD HEARING
APRIL 12, 2000

The Zoning Board of Appeals hearing was called to order following the Louis Raul hearing by chair Joni Hosler at the Hayes Township Hall, 09195 Old 31, Charlevoix.

ZBA members present were Fred Parsons, Joni Hosler, Paul Richards, Jim McMahon, and Steve Wilson.

Also present were Kevin J. Whitley, Ethel Knepp, and Joe Rivard.

The purpose of this hearing was to hear a request from Joe Rivard for an 8.5 acre variance from section 4.13B lot size.

Joe Rivard explained that he bought two parcels in 1972 from one owner who continued to live on the small 1.5 acre parcel until 1979. In 1992 Joe built a new home on the larger 13.72 acre parcel and he is renting out the older house.

Joe also explained that in 1993 he received a letter from the Charlevoix County Equalization Director telling him that "It would appear to be more practical to have your property combined into one parcel."

Joe sought the advice from the Hayes Township Assessor who estimated that there would be tax saving benefits in combining the two properties. Joe agreed to let the Charlevoix County Equalization Director combine the properties for tax assessing purposes but he never combined the deeds.

Ethel Knepp explained that new state tax laws as a result of proposal A changed the way property is taxed and now you receive a tax savings on your homestead property that is not available to property that you rent out to others.

Therefore, Joe Rivard is asking to return this property back to the way it was before 1993 which was two separate parcels for assessing purposes and then they will match the two separate deeds. The Hayes Township parcel division ordinance and Zoning Ordinance requires that all new lots splits in the A-1 zone result in lots that are at least 10 acres. An 8.5 acre variance is needed because the smaller lot will be only 1.5 acres.

Jim McMahon stated that it is not necessary to split the lots in order to receive a homestead tax exemption because the state law allows a property owner to receive the homestead exemption on part of a property when the other part is rented out. Jim also reminded the ZBA that granting a variance for a lot less than 10 acres will allow the applicant to sell that lot.

Fred Parsons stated that this small lot would not be out of character for the area because there are other small lots zoned R-2 close by.

FRED PARSONS MADE A MOTION TO APPROVE THE 8.5 ACRE VARIANCE FROM THE ZONING ORDINANCE SECTION 4.13B LOT SIZE FOR JOE RIVARD FOR PARCEL NUMBER 5-07-109-009-00. PAUL RICHARDS SECONDED THE MOTION.

THE MOTION IS BASED ON THE FOLLOWING CRITERIA FROM SECTION 7.05C OF THE ZONING ORDINANCE:

1. Dimensional zoning requirements cannot be met on an existing lot where narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site (such as wetland, flood plain, bedrock condition, etc.) inhibit the lawful location of a principal or accessory structure.
 - a. The Board finds that the applicant desires to return his property back to the way it was prior to 1993 which was two separate lots of record created before the Zoning Ordinance was adopted.
 - b. The Board finds that the applicant agreed to have the two parcels combined for tax assessing purposes in 1993 not knowing that the state tax laws would change the assessing regulations.
 - c. The Board finds that the two deeds were never combined and that fact supports returning these lots back to the size they were before 1993.
 - d. The Board finds that this property cannot be returned to the way it was before 1993 because the Hayes Township Parcel Division Ordinance and the Hayes Township Zoning Ordinance requires all lots in the A-1 zone to be at least 10 acres unless the ZBA grants a variance from section 4.13.
2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.
 - a. The Board finds that this property has a unique problem because two lots were combined in 1993 for tax assessing purposes and that doesn't match the two separate deeds.

3. The practical difficulty was not created by an action of the applicant, an agent of the applicant, or a predecessor in title to the applicant, and either existed at the time of adoption of the requirement from which the variances requested, or is necessary as a result of governmental action. A self created hardship is not a valid basis for a variance.

- a. The Board finds that this parcel was two lots of record that existed before the Zoning Ordinance was adopted.

- b. The Board finds that the state tax laws were changed since this lot was combined.

- c. The Board finds that the Hayes Township Zoning Ordinance was changed to increase the minimum lot size from 2 acres to 10 acres since this property was purchased by the applicant.

- d. The Board finds that a parcel division ordinance was adopted by the Township since these two lots were combined and the parcel division ordinance requires that all lot splits request are reviewed by the Township to insure they meet the current Zoning Ordinance requirements.

4. The appellant presents information showing that the requested variance will not be contrary to the intent and purpose of the zoning ordinance.

- a. The Board finds that the variances will not be contrary to the Zoning Ordinance because this lot split simply returns the property back to the way it was prior to the adoption of the Zoning Ordinance.

Will not cause a substantially adverse effect upon adjacent properties.

- a. The Board finds that the variances will not adversely effect adjacent properties because there are other small lots in the area zoned R-2.

Will relate only to the property under control of the appellant.

a. The Board finds this to be true.

Will not essentially alter the character of the surrounding area.

a. The Board finds this to be true because the character of this area is single family residences and the applicant is not proposing to build any additional residences.

Will not increase the hazard from fire, flood, or similar dangers.

a. The Board finds that these hazards will not change because no new construction is planned.

Will not increase traffic congestion.

a. The Board does not expect traffic congestion to increase because the number of homes is not changing.

5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zone district.

a. The Board finds that the proposed variance is the minimum necessary to allow the applicant to return his property back to the way it was prior to 1993, to allow the applicant to make the tax assessing records match the deeds, and to allow the applicant to file 100% homestead on the property he lives on.

UPON MOTION MADE BY FRED PARSONS, AND SECONDED BY PAUL RICHARDS, THE VARIANCES ARE GRANTED.

ROLL CALL VOTE:

FRED PARSONS	YES
PAUL RICHARDS	YES
JIM MCMAHON	YES
STEVE WILSON	YES

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: Joe Rivard

Hearing Date 4-12-2000

The property of Joe Rivard identified by the tax number 15-07-109-009-10.

Hereinafter referred to as the "property".

Applicant seeks a 8.5 acre variance from section 4.13B (lot size) of the Zoning Ordinance. The applicant needs the variance to split a 15.22 acre parcel into one parcel that is 1.5 acres and one parcel that is 13.72.

The Board having considered the application, a public hearing having been held on 4-12-00, after giving due notice as required by law, the Board having heard the statements of the applicant, the Board having considered the following exhibits:

1. A zoning application undated.
2. A document from Ethel Knepp titled "RIVARD ZONING BOARD OF APPEALS"
3. A mortgage survey dated 5-24-72.
4. A letter to Joseph and Kathleen Rivard from Joan Blanchard dated 5-11-93.

And the Board having reached a decision on this matter, stated as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that this 15.22 acre parcel cannot be split into two parcels without a variance.
2. The Board finds that the property is currently occupied by two single family homes.
3. The Board finds that no additional dwellings are proposed so the density will remain unchanged.
4. The Board finds that there are small lots zoned R-2 in the area.

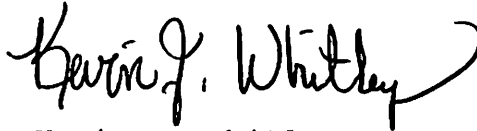
The Board approves the findings from Section 7.05 and approves an 8.5 acre variance for Joe Rivard for parcel number 15-07-109-009-00.

The minutes of the 2-9-00 Walker ZBA hearing were corrected. The applicant had requested and received a 20 foot variance to build a house with a 5 foot setback form the Right of way. The minutes incorrectly referred to a 5 foot variance from the ROW setback. The minutes were changed to reflect the actual variance of 20 feet.

PAUL RICHARDS MADE A MOTION TO APPROVE THE MINUTES OF THE 2-9-00 WALKER HEARING A AMENDED. FRED PARSONS SECONDED THE MOTION. MINUTES APPROVED UNANIMMOUSLY.

Motion to adjourn at 8:45 P.M. hearing adjourned.

Respectfully Submitted,

A handwritten signature in black ink, reading "Kevin J. Whitley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kevin J. Whitley