

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
WILLIAMSON HEARING
August 13, 2003**

The Zoning Board of Appeals meeting continued following the Conklin hearing.

Members present were Jim McMahon, Fred Parsons, Brad Kessler, Joni Hosler, and Marlene Golovich. Also present were Lisa Zipp and Ethel Knepp. Audience members present were Sam Williamson, Cass Williamson, and Jodi Lyons (Home Planning & Design).

The purpose of this hearing was to hear a request from Sam and Cass Williamson for a 25 foot variance from Section 5.13, Lakefront Zoning of the Zoning Ordinance. They have made application to replace an existing home with an upgraded year around residence and garage where the existing cottage is located at 07415 Birdland Drive, property number 15-07-301-016-00, Zone District R-1 (Residential, Single Family). This property is approximately 150 feet wide and 450 feet deep and has frontage on Lake Charlevoix.

Sam and Cass Williamson were present, along with their home designer, Jodi Lyons, to speak about their request. Jodi did most of the speaking on behalf of her clients, Sam and Cass Williamson. Jodi has worked on designing several homes in the "Birdland" area in the past. Jodi stated the current house is estimated to have been built sometime in the 1950s. The Williamsons have owned this property since 1995. They built a new pole barn on this property last summer. The house (or cottage) was built on a concrete slab. Jodi stated that the home is now sinking. The Williamsons want to make their cottage a year around residence. The house is in bad shape and is in need of some substantial repairs and upgrades. The Williamsons desire to tear down the existing cottage and replace it with a new residence. The new residence will be approximately 3000 square feet. They had been debating for some time whether it could be upgraded, remodeled or added on to. They have come to realize that it is in bad enough shape that it is in their best interest to remove the existing structure and start over with new construction. In addition, currently, their septic system drains to the front of the cottage, closer to the lake. With the building of the new residence, they will be moving the septic and drainfield behind the pole barn, closer to rear of property, further away from the lake. The current cottage is setback 75 feet from the high water mark. When the cottage was built, zoning at the time only required the residence be setback 50 feet from the lake. The Williamsons wish to build their new residence in the same approximate "footprints" where their cottage presently is. They like the location. They also cited some hardship reasons for having to move the house further back. They said moving their driveway would present some problems for getting in and out of the garage and turning around and also getting boats around the house and garage and down to the lake. They also stated the elevation of the property presents a problem. They said there is a higher elevation further to the rear of the property and they do not wish to be elevated. They also stated there is a steep ridge near the rear of the property which includes many big rocks and/or boulders that pose a great problem in building if you have to dig into that ridge.

Jim McMahon stated he had visited the property. He noted that there is a grade, but not very steep. He also noted that the building drawing on the site plan does not include eaves. The Township requires eaves to be included as part of the space for the setbacks. He also mentioned casement windows cannot intrude into the setback when cranked out. He also noted that there is a large deck in front of the house. He estimated it to be approximately 40 feet across and 18 feet wide. He asked the Williamsons if they intend to take the deck out. The deck now is not behind the 75 feet setback. It is not attached to the house. There is walkway between the house and the deck. Ethel Knepp stated you could leave the deck there but you could not replace it. Ethel suggested that we leave the deck alone as it is separate from the house and get back to dealing with the 100 feet setback issue.

Brad Kessler had also visited the property and stated that he did not understand why the Williamsons could not build the new residence 25 feet back and meet the 100 feet setback requirement. He believed a very nice new residence could be built meeting the 100 feet setback. Jodi Lyons stated that there would be no turn around for the driveway and they did not want to deal with the elevation. Brad stated he did not think that would be a problem, and maybe the newly built pole barn was creating the problem which was created by the Williamsons. Jodi stated that the pole barn was not creating the problem. She further said that all the neighbors are closer to the lake. Brad stated that is not a reason to grant a variance. He further stated the property owners to the north look like they are further back from the lake than the Williamson's current cottage. Jodi said that the ridge in the back with the rocks poses a big problem. Brad stated that it didn't even look like you would need to go back that far, but it looked to him that if you had to, it could be dealt with and some rocks and dirt could be moved. Jodi argued that it is very difficult and very costly to do so in this area.

Fred Parsons had also visited the property. He noted that when the original structure was built, only a 50 feet setback was required. He said there were more houses along the lake built in the 50 feet setback era than in the present 100 feet setback era. He noted that the current septic and drainfield are too close to the water's edge and it would certainly be desirous to have the septic and drainfield moved and pumped to the rear of the property. He also noted that the ledge and rock formation that runs along the properties in this area is dominant and does pose a big problem. He noted the property beyond where the ridge ends becomes flat and very wet.

Jim McMahon stated he measured the property and found that you can move the house back 25 feet and still be in front of the rock/ledge area. He also noted that this property is approximately 150 feet wide, 450 feet deep, and 1.5 acres, which is a large lot for a lakefront parcel. He also noted the property is heavily wooded. The neighbors being closer to the lake should not be an issue because you can hardly see the other houses due to the width of the property and the trees. He stated he believed a very nice house could be built in an area conforming to the 100 feet setback.

Ethel Knepp suggested the board consider if this were a request from the applicant to remodel and add on to the existing cottage, rather than to tear down and rebuild. She stated if they wanted

to add on even one inch, they would require a variance because you cannot add on to a non-conforming structure. Ethel said if you are replacing an existing home you are not disturbing any new ground. Jim McMahon and Marlene Golovich said you are going to disturb it anyway. The zoning board of appeals members agreed that it would be better to move the septic system and drainfield to the rear of the property rather than to leave it where it is now.

Brad Kessler cited the first 2 paragraphs of section 5.13 of the Zoning Ordinance which places a higher standard on the lakefront property owner in protecting and preserving the environment for his reason why a 25 feet variance should not be granted.

Fred Parsons made a motion to grant the 25 feet variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00. There was no support for the motion. The motion failed.

Brad Kessler made a motion to deny the 25 feet variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00. Marlene Golovich supported the motion.

Jim McMahon read the criteria from the Zoning Ordinance Section 7.05C which is required to be considered before approving variances:

Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power to grant dimensional variances providing all the following circumstances exist:

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.

The Board finds this to be false.

2. The problem creates a practical difficulty, which is unique and is not shared by neighboring properties in the same zone.

The Board finds this to be false.

Since all the criteria must be found to be true in order to grant a variance, it was decided there was no need to continue on reading the remainder of the criteria.

Ethel Knepp asked the board if they would grant the variance if the applicants wanted to remodel and add on to the existing house, if they were to add onto the sides and rear of the property only without going more toward the lake. She thought that was a reasonable request. She stated she

thought the board should offer them that option to save the cost of another meeting. Jodi Lyons responded by saying they would take that option if offered to them. She said if they were to remodel, the county building department would require them to replace the foundation and many other parts of the existing cottage anyway, as it no longer meets code. By doing it this way, they could work around it and end up getting the new house they want anyway. Jodi also stated if they were to remodel/add on to instead of building new, they may leave the septic and drain field in their current location.

Marlene Golovich said a variance is needed either way - whether they build new or add on and remodel. Without the variance, they have to leave their cottage as is or move to the 100 feet setback and build a new house. Brad Kessler stated he would be opposed to granting the variance under either condition.

Ethel Knepp stated that the current cottage is a non-conforming structure, which means they are allowed to use it as is, maintain it and repair it. Ethel stated she believed if the applicants had come to the board just asking to remodel and add on to their existing cottage that the board would have allowed the variance. Joni Hosler said she believed that would change the answers to the criteria to allow the variance.

Jodi Lyons asked how many properties in the "Birdland" area are setback at least 100 feet. Ethel Knepp stated very few. Jodi said she believed most of the homes in the Birdland area were set back 60-90 feet. Marlene Golovich said that was the "magic" number they should be discussing: 90 feet.

Jim McMahon asked the applicants if they would consider a 10 foot variance. At this time, the applicants said they would not consider a 10 foot variance. Since there was an open and seconded motion on the floor, it was decided they needed to go ahead and vote on the motion to deny the 25 foot variance that had not been acted on yet. The motion was to deny the 25 foot variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00.

ROLL CALL VOTE:

Brad Kessler	Deny
Joni Hosler	Against the denial
Fred Parsons	Against the denial
Marlene Golovich	Deny
Jim McMahon	Deny

The request for a 25 foot variance is denied.

Fred Parsons made a motion to grant a 25 foot variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00 for the purposes of remodeling

and adding on to the existing residence to the sides and rear of the structure only. Joni Hosler supported the motion.

Jim McMahon read the criteria from the Zoning Ordinance Section 7.05C which is required to be considered before approving variances:

Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power to grant dimensional variances providing all the following circumstances exist:

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.

The Board finds this literally to be false, but we are trying to be reasonable and can make a reasonable exception for an addition and remodel.

2. The problem creates a practical difficulty, which is unique and is not shared by neighboring properties in the same zone.

The Board finds this to be true. It is not practical to tear down the house and move it.

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 the 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.

The Board finds this to be true.

4. The appellant presents information showing that the requested variance:

- a. Will not be contrary to the intent and purpose of the zoning ordinance.

The Board finds this to be true

- b. Will not cause a substantially adverse effect upon adjacent properties.

The Board finds this to be true.

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

The Board finds this to be true.

- d. Will not essentially alter the character of the surrounding area.

The Board finds this to be true.

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

The Board finds this to be true.

- f. Will not increase traffic congestion.

The Board finds this to be true.

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

The Board finds this to be true.

Marlene Golovich spoke in opposition to granting the variance for the remodel/addition. She said if the board is going to grant this variance anyway, let them build a new house where they want - give them the original variance. She said she felt the board was being forced to grant the variance. She stated she voted the way the ordinance was written. Ethel said the board was forced to give them reasonable use of their property. Adding on will disturb as much as building new. Marlene stated maybe we should change all of Birdland's zoning to a 50 feet setback if we are just going to grant their variance requests regardless. Marlene strongly felt that if the board was going to grant this remodel/addition variance, to give them the first variance they requested. She didn't want them to have to keep this old cottage that did not adequately fit their needs. She would rather them have the nice new house they want.

The Williamson's asked why they were being penalized when so many other property owners in the Birdland area have been granted variances.

Marlene Golovich told Jodi Lyons that she was not helping the Williamson's by arguing so fiercely and "digging her heels in." Marlene told Jodi that there was a compromise to be had and to help the Williamsons find the compromise.

Jim McMahon stated most of the Birdland parcels have no greenland (shoreland protection strip). They are all grass to the water's edge.

Since there was an open and seconded motion on the floor, it was decided to go ahead and vote on the motion to grant a 25 feet variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00 for the purposes of remodeling and adding on to the existing residence to the sides and rear of the structure only.

ROLL CALL VOTE:

Brad Kessler	No
Joni Hosler	Yes
Fred Parsons	Yes
Marlene Golovich	No
Jim McMahon	No

MOTION FAILED.

Chair Jim McMahon recessed the meeting for a short break at 10:10 p.m. The meeting reconvened at 10:15 p.m.

The Williamson's asked the board if they would offer them a 15 feet variance for replacement of the existing structure.

Fred Parsons made a motion, supported by Joni Hosler, to grant a 15 feet variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00, in which no part of the structure can be closer than 85 feet from the high water mark.

Jim McMahon read the criteria from the Zoning Ordinance Section 7.05C which is required to be considered before approving variances:

Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power to grant dimensional variances providing all the following circumstances exist:

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.

The Board finds this to be true when adapting a reasonable exception thought process.

2. The problem creates a practical difficulty, which is unique and is not shared by neighboring properties in the same zone.

The Board finds this to be true when adapting a reasonable exception thought process.

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 the 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.

The Board finds this to be true.

4. The appellant presents information showing that the requested variance:

- a. Will not be contrary to the intent and purpose of the zoning ordinance.

The Board finds this to be true

- b. Will not cause a substantially adverse effect upon adjacent properties.

The Board finds this to be true.

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

The Board finds this to be true.

- d. Will not essentially alter the character of the surrounding area.

The Board finds this to be true.

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

The Board finds this to be true.

- f. Will not increase traffic congestion.

The Board finds this to be true.

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

The Board finds this to be true.

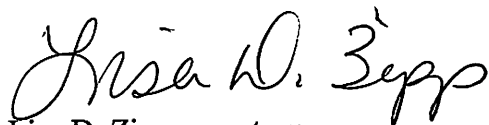
ROLL CALL VOTE:

Brad Kessler	Yes
Joni Hosler	Yes
Fred Parsons	Yes
Marlene Golovich	Yes

MOTION CARRIED.

Fred Parsons made motion, supported by Joni Hosler, to adjourn the meeting. Without objection, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa D. Zipp". The signature is written in dark ink and is positioned above the printed name.

Lisa D. Zipp, secretary

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS**

DECISION AND ORDER

Applicant: Samuel & Cassandra Williamson
Hearing Date: August 13, 2003

The property is identified by the tax number 15-07-301-016-00. Hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on August 13, 2003 after giving due notice as required by law, the Board having heard the statements of the Applicant and their agent, Jodi Lyons, and the Board having considered the following exhibits:

1. A Zoning Application from Samuel & Cassandra Williamson by Jodi Lyons;
2. A Memo from Ethel Knepp;
3. A Site Plan - Existing;
4. A Site Plan - Proposed

GENERAL FINDS OF FACT

1. The Board finds that the property is approximately 150 feet wide, 450 feet deep, and approximately 1.5 acres
2. The Board finds there is an existing house that is setback 75 feet from the high water mark of Lake Charlevoix;
3. The Board finds that the current zoning ordinance requires a lakefront setback of 100 feet from the high water mark of Lake Charlevoix, so this home is non-conforming to the setback requirement;
4. The Board finds that the current home was built when the zoning ordinance required only a 50 feet setback from the high water mark of Lake Charlevoix;
5. The Board finds this home is 589.44 feet above sea level;
6. The Board finds that there is a substantial rock/ledge formation to the rear of the property;
7. The Board finds that there is a pole barn to the rear of the existing house, built in summer 2002, that is 598.67 feet above sea level;
8. The Board finds that it is desirous to move the existing septic and drain field further to the rear of the property, as intended with building a new house, rather than leaving it where is it now, closer to the lake;

The Board approves the findings from Section 7.05C of the Zoning Ordinance and the Board approves a 15 feet lakefront setback variance from Section 5.13 Lakefront Zoning of the Zoning Ordinance for property tax number 15-07-301-016-00, in which no part of the structure can be closer than 85 feet from the high water mark.