

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
KOMER HEARING
AUGUST 21, 2002

The Zoning Board of Appeals hearing was called to order at 7:30 by acting chair Jim McMahon at the Hayes Township Hall, 09195 Old 31, Charlevoix.

ZBA members present were Jim McMahon, Fred Parsons, and Marlene Golovich.

Also present were Kevin Whitley, Ethel Knepp, Janice Komer, Doug Summers, Park Willis and Christine Willis.

An election of officers was held because this was the first ZBA meeting of 2002:

Marlene Golovich nominated Jim McMahon to be chair for the Hayes Township Zoning Board of Appeals for 2002. Fred Parsons seconded the nomination. Jim McMahon was elected chair unanimously.

Marlene Golovich nominated Joni Hosler to be vice-chair of the Hayes Township Zoning Board of Appeals for 2002. Jim McMahon seconded the nomination. Joni Hosler was elected vice-chair unanimously.

The purpose of this hearing was to hear a request from Janice Komer for a 50 foot variance from section 5.13A(1) (lakefront setback), and a 1 foot variance from section 5.13 A(1) (elevation above sea level) of the Zoning Ordinance. Janice Komer is proposing to tear down the existing home and build a new home on approximately the same footprint on property located at 07375 Birdland Drive, in the R-1 zone with the id number 15-07-301-003-00.

Janice explained that she wants to remove the existing home and build a new home because the existing home has been neglected and there is extensive mold through out the house. Janice explained that it would be unreasonable to move the location of the new home back from the lake because that would require several trees to be removed. Also, the back of the lot along Birdland Drive has standing water on it because other properties drain onto hers. Janice also explained that the existing pole barn will remain in its present location and the pole barn is at a higher elevation than the proposed house so it would not be practical to build the new house close to the pole barn.

Janice stated that the best use of the property would be to locate a new home on the existing footprint because this is the widest part of the lot and because it would have the least effect on the neighbors.

Janice answered questions about the existing house and stated that the house was built in the 1960's (before Township zoning) and the existing drain field is located on the Lake side of the house. Janice is proposing to build a new drain field at the back of the property.

Doug Summers, builder for the proposed house, stated that it is not practical to move the house back 100 feet from the high water mark of Lake Charlevoix because the neighboring house are in line and setting one house back would look out of place. Doug also stated that many trees would need to be removed to locate a new house back farther from the lake.

Janice Komer stated that a neighbor is here to support the variance request. Janice also stated that it would be unfair to restrict her view of the lake and that her privacy and the privacy of the neighbors would be impaired if the trees were cut for the location of the new house.

Park and Christine Willis, adjacent neighbors, were present and stated that they support the variance requests.

Jim McMahon, disputed the statement that the houses are all in line. Jim estimated that an adjacent house may be back from the lake farther than this house.

Fred Parsons acknowledged that most of the lots in this area are wet in the back. Fred also stated that there may be less environmental impact to build the house in the same footprint than relocate it farther away from the Lake.

Marlene Golovich asked for a compromise between the existing setback of 50 feet and the required setback of 100 feet because there is room to move the house back some distance without losing the lake view, harming the pole barn, or building on land that has standing water.

JIM MCMAHON MADE A MOTION TO GRANT A 30 FOOT VARIANCE FROM THE ZONING ORDINANCE SECTION 5.13A(1) LAKEFRONT SETBACK SO THAT NO PART OF THE NEW BUILDING OR DECK IS CLOSER THAN 70 FEET FROM THE HIGH WATER MARK OF LAKE CHARLEVOIX BASED ON THE FOLLOWING FINDINGS OF FACT.

Chair Jim McMahon read the criteria from the Zoning Ordinance Section 7.05C1 which is required to be considered before approving variances:

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 the natural characteristics of the site inhibit the lawful location of the new house because the back of the property is too wet for construction of anything.

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 the location of the existing driveway and pole building are unique.

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 the existing home was built before the before the Township increased the setback from 50 feet to 100 feet.

b. The Board finds that the location of the pole building was not created by the applicant.

c. The Board finds that an existing home and deck is located 38 feet from Lake Charlevoix.

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

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

The Board finds that the proposal will not harm the health and welfare of the area.

Will not cause a substantially adverse effect upon adjacent properties.

The Board finds this to be true because adjacent properties have a lake view home with a similar setback.

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

The Board finds this to be true.

Will not essentially alter the character of the surrounding area.

The Board finds that this proposal will not change the character of the surrounding area which is lakefront homes.

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

The Board finds this to be true.

Will not increase traffic congestion.

The Board finds this to be true because the applicant is proposing to replace an existing house with a new house.

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 granting a variance is necessary to permit a new home to be built with a lake view which is reasonable for this area.

b. The Board finds that a variance is necessary to permit a house to be built without requiring major changes to the trees and the pole building.

c. The Board finds that the lakefront setback of the new home will be an increase over the existing home.

The following conditions must be met before the variance will be considered valid:

1. The existing deck will be removed and, if rebuilt, no part of the deck will be closer than 70 feet from the high water mark of Lake Charlevoix.

2. A minimum of 12 deep rooted shrubs or trees will be located on the Lake side of the house before the fall of 2003 to protect the lake from runoff. Existing trees can be included in the 12 required deep rooted shrubs or trees.

MARLENE GOLOVICH SECONDED THE MOTION. ROLL CALL VOTE:

FRED PARSONS YES
MARLENE GOLOVICH YES
JIM MCMAHON YES MOTION APPROVED.

FRED PARSONS MADE A MOTION TO APPROVE A 1 FOOT VARIANCE FROM THE ZONING ORDINANCE SECTION 5.13A (1) (ELEVATION ABOVE SEA LEVEL) SO THE APPLICANT CAN REPLACE AN EXISTING HOME WITH A NEW HOME WITHOUT THE NEED TO FILL THE LAND AND THE APPROVAL IS BASED ON THE FOLLOWING FINDINGS:

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 the existing slope of the land are natural characteristics of the site which inhibit the lawful location of the new house without building on fill.

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.

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.

The Board finds that the existing home was built before Township Zoning.

4. The appellant presents information showing that the requested variance

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

The Boards finds that the proposal will not harm the health and welfare of the area.

Will not cause a substantially adverse effect upon adjacent properties.

The Board finds this to be true because the existing home has been at this elevation for many years.

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

The Board finds this to be true.

Will not essentially alter the character of the surrounding area.

The Board finds that this proposal will not change the character of the surrounding area which is lakefront homes.

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

The Board finds this to be true because the applicant is proposing to replace an existing home.

Will not increase traffic congestion.

The Board finds this to be true because the applicant is proposing to replace an existing home.

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 that granting a 1 foot variance is necessary to permit a new home to be built without requiring the new home to be built on fill.

MARLENE GOLOVICH SECONDED THE MOTION. ROLL CALL VOTE:

MARLENE GOLOVICH YES

JIM MCMAHON YES

FRED PARSONS YES

MOTION APPROVED.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: Janice Komer

Hearing Date: 8-21-02

The property identified by the tax number 15-07-301-003-00.

Hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on 8-21-02, after giving due notice as required by law, the Board having heard the statements of the Applicant and the Builder, the Board having heard from an adjacent neighbor, and the Board having considered the following exhibits:

1. A zoning application dated 7-17-02.
2. A memo from Ethel Knepp to ZBA dated 7-24-02.
3. A site plan.
4. A notice of hearing dated 7-24-02.
5. An agenda.

GENERAL FINDINGS OF FACT

1. The Board finds that there is an existing house and deck set back 38 feet from the high water mark of Lake Charlevoix.
2. The Board finds that the house was built before the Township had a Zoning Ordinance.
3. The Board finds that the current Zoning Ordinance requires new homes to be setback at least 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 this home is located 589.88 feet above sea level.
5. The Board finds that the Zoning Ordinance requires homes to be at least 590 feet above sea level so a variance is needed to replace this existing home with a new home.
6. The Board finds that an existing pole barn is located behind the house at a higher elevation.
7. The Board finds that the property slopes from the pole barn down to Lake Charlevoix.

8. The Board finds that the back of the property has standing water on it and would not be a good location for any building.

The Board approves the findings from Section 7.05C of the Zoning Ordinance and the Board approves a 30 foot variance from the Zoning Ordinance Section 5.13 A1 (lakefront setback) and a 1 foot variance from the Zoning Ordinance section 5.13A (1) (elevation above sea level) for parcel number 15-07-301-003-00.

In other business, the Board approved minutes from prior meetings:

The minutes of the 9-26-01 W. Smith ZBA hearing were corrected: the word "be" was added after the second "will" in #6 on page 5. FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF THE W. SMITH ZBA HEARING AS AMENDED. MOTION SECONDED BY MARLENE GOLOVICH. MINUTES APPROVED.

The minutes of the 11-28-01 Wipple hearing were corrected: the word "and" should be "an" in #5 on page 5. FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF THE 11-28-01 WIPPLE ZBA HEARING AS AMENDED. MOTION SECONDED BY MARLENE GOLOVICH. MINUTES APPROVED.

The minutes of the 11-28-01 Furgeson hearing were corrected: "20,0000" should be "20,000" in #8 on page 4. FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF THE 11-28-01 FERGUSON ZBA HEARING AS AMENDED. MOTION SECONDED BY MARLENE GOLOVICH. MINUTES APPROVED.

The Board discussed changing ZBA procedures to have the opportunity to approve minutes of past hearings sooner.

FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF ZBA HEARINGS WITHIN 60 DAYS OF THE RESPECTIVE HEARING. THE MINUTES WILL BE APPROVED AT THE NEXT ZBA HEARING OR AT A SPECIAL MEETING IF A HEARING IS NOT SCHEDULED WITHIN 60 DAYS. THE BOARD WILL NOT RECEIVE PAY FOR ANY SPECIAL MEETING THAT IS ONLY FOR THE PURPOSE OF APPROVING MINUTES. MARLENE GOLOVICH SECONDED THE MOTION. ROLL CALL VOTE:

MARLENE GOLOVICH	YES
JIM MCMAHON	YES
FRED PARSONS	YES MOTION APPROVED.

HEARING ADJOURNED.

Respectfully Submitted,

Kevin J. Whitley

