

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
THOMAS WALKER HEARING
FEBRUARY 9, 2000

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

ZBA members present were Bob Alexander, Fred Parsons, Joni Hosler, and Paul Richards.

Also present were Kevin J. Whitley, Ethel Knepp, and Thomas Walker.

The purpose of this hearing was to hear two variance requests from Thomas Walker for property located on U.S. 31 across from Villa Road with the id number 15-07-301-010-00. The applicant is requesting a 20 foot variance to build a house with a setback of 5 feet from the U.S. 31 right of way. The applicant is also requesting a 5 foot height variance from the maximum allowed height of 25 feet.

Thomas Walker explained his request and acknowledged that a small house could be built on this lot with out the variances but considering the price of this land with 485 feet of Lake Michigan frontage he wants to build a larger house to make it worthwhile. Thomas explained that the drain field will be on the opposite side of U.S. 31 and the Health Department has approved the site.

There was discussion regarding the unusually large highway right of way, which will keep this proposed house back 130 feet from the centerline of U.S. 31.

BOB ALEXANDER MADE A MOTION TO APPROVE THE REAR YARD SETBACK VARIANCE OF 20 FEET FOR THOMAS WALKER FOR PARCEL 15-07-102-009-00 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 road right of way is extremely large and this house will still maintain a 130 feet setback from the centerline which is larger than most centerline setbacks in the A-1 zone.
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 unique problems because it is a lot of record between Lake Michigan and the large U.S. 31 right of way. The proposed house will meet the requirement for the setback from Lake Michigan.

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 lot of record was platted before Township Zoning and was not created by the applicant.

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 this to be true.

Will not cause a substantially adverse effect upon adjacent properties.

a. The Board finds that the proposed setback will not adversely effect adjacent property and the setback from the centerline will be greater than other properties in A-1.

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.

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

a. The Board finds this to be true.

Will not increase traffic congestion.

a. 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.

a. The Board finds that the proposed setback is the minimum necessary to permit a reasonable sized house to be built while maintaining the required setback from Lake Michigan.

No other members of the audience spoke about this proposal. One letter was received from an adjacent neighbor: "I am opposed to these variances, in particular, the variance to the height regulation. The granting of a variance that has a negative effect to the property and investments of others is wrong. The zoning ordinances are a major part of the decision of most people to live and invest in a particular area and I think that we in Hayes Township owe those people, and future residents, the dependency of the ordinance. The variance to the height regulation negatively affects my house and the house I plan to build in the spring. Best Regards, Don Hufford"

UPON MOTION MADE BY BOB ALEXANDER TO APPROVE THE FINDINGS OF FACT AND GRANT A 20 FOOT VARIANCE FROM SECTION 4.13, SECONDED BY FRED PARSONS, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE GRANTED.

ROLL CALL VOTE:

FRED PARSONS YES
BOB ALEXANDER YES
PAUL RICHARDS YES

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: Thomas Walker

Hearing Date 2-9-2000

The property of Thomas Walker identified by the tax number 15-07-102-009-00.

Hereinafter referred to as the "property".

Applicant seeks a 20 foot variance from section 4.13 of the Zoning Ordinance. Applicant needs the variance to build a house within 5 feet of the U.S. 31 right of way.

The Board having considered the application, a public hearing having been held on 2-9-00, 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 dated 1-7-00
2. A letter to Ethel Knepp from Thomas Walker dated 1-7-00.
3. An elevation map with property boundaries.
4. An elevation map showing an outline of a possible house.
5. A notice of hearing to adjacent property owners from Ethel Knepp dated 1-14-00.
6. A memo from Ethel Knepp to the ZBA dated 1-14-00.
7. A letter to ZBA regarding neighbors that were notified dated 1-14-00.
8. A letter to Ethel Knepp from Don Hufford dated 1-31-00.

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

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned A-1 and is located on U.S.31 with Lake Michigan frontage.
2. The Board finds that the property is a lot of record created before the Hayes Township Zoning Ordinance.
3. The Board finds that under Section 4.13 a 25 foot setback is required from the U.S. 31 right of way and under Section 5.13 a 100 foot setback is required from the high water mark of Lake Michigan.
4. The Board finds that the U.S. 31 right of way is 250 feet in this area which is unusually large and the right of way reduces the buildable area of this property.

The Board approves the findings from Section 7.05C of the Zoning Ordinance as listed above in the motion and the Board approves a 20 foot variance from the rear yard setback for Thomas Walker for parcel number 15-07-102-009-00.

The next part of this hearing was a request from Thomas Walker for a five foot variance from the maximum height regulation in Section 2.02 of the Zoning Ordinance. Section 2.02 states that buildings within 500 feet of a lake must be no more than 25 feet tall.

Thomas Walker stated that he is considering a high pitched roof and he would like to have a 5 foot variance in case the building needs to be higher than 25 feet.

Bob Alexander noticed that the applicant has not submitted any house plans or building elevations so the applicant has not demonstrated the need for a height variance.

BOB ALEXANDER MADE A MOTION TO DENY THE 5 FOOT HEIGHT VARIANCE FOR THOMAS WALKER FOR PARCEL NUMBER 15-07-102-009-00 BECAUSE IT WOULD BE CONTRARY TO THE INTENT OF THE ORDINANCE BASED ON THE FOLLOWING:

1. THE APPLICANT HAS NOT SHOWN PRACTICAL DIFFICULTY IN BUILDING A HOUSE NO MORE THAN 25 FEET HIGH.
2. A TALLER HOUSE COULD AFFECT NEIGHBORING PROPERTIES.
3. APPROVAL OF THIS VARIANCE COULD SET A PRECEDENT AND ENCOURAGE OTHER LAKE FRONT PROPERTY OWNERS TO DESIGN HOUSES UP TO 30 FEET TALL.
4. A HOUSE TALLER THAN 25 FEET COULD ALTER THE CHARACTER OF THE AREA.
5. THE STEEP SLOPE OF THIS PROPERTY IN COMBINATION WITH A TALLER HOUSE COULD CAUSE PROBLEMS FOR FIRE FIGHTING.

MOTION SECONDED BY FRED PARSONS.

ROLL CALL VOTE:

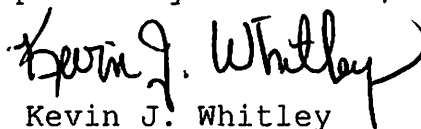
PAUL RICHARDS YES
BOB ALEXANDER YES
FRED PARSONS YES MOTION APPROVED.

The minutes of the 12-1-99 McMahon ZBA hearing were corrected: Steve Wilson's name was added to the list of members present. Several typographical errors and spelling errors were corrected. The minutes as presented misidentified the East side yard and the West side yard several times. These errors were corrected.

FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF THE 12-1-99 MCMAHON ZBA HEARING AS AMENDED. THE MOTION WAS SECONDED BY PAUL RICHARDS. MINUTES APPROVED UNANIMOUSLY.

FRED PARSONS MADE A MOTION TO ADJOURN. BOB ALEXANDER SECONDED THE MOTION. HEARING ADJOURNED AT 8:25 P.M.

Respectfully Submitted,


Kevin J. Whitley

Amended 4-12-00

