

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
February 13, 2008**

The Zoning Board of Appeals hearing was called to order by Chair Joni Hosler at 7:30 p.m. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix.

Members present were Scott Parker, Jim Rudolph, Joni Hosler, Steve Wilson, and Brad Kessler. Also present were Jonathan Scheel, ZA and Marlene Golovich, secretary. Audience members were John Ferguson, Rik Lobenherz, Jerry & Carol Seymour.

The purpose of the meeting was to hear a request from Indian Shores LLC for a variance from the standards of the 4:1 length to width ratio from Section 6 d, of the Parcel Division Ordinance for two (2) lot splits on property tax numbers 15-007-130-010-00 & 15-007-130-016-00 located at 07847 Indian Trails.

ZA Jonathan Scheel stated that the property is zoned Residential -1 and the zone district requires a 2 acre minimum. The applicant is requesting a variance to split both lots down the middle creating four (4) lots, each approximately 5 acres and each with a minimum of 200 feet of water frontage. The property currently meets the 200 ft width but not the 4:1 length to width ratio required by State law and the Hayes Township ordinance for a parcel division.

Agents for the applicant John Ferguson and Rik Lobenherz were present to answer any questions.

Rik Lobenherz stated that the property is in a trust and the siblings wish to split the parcels. The property is also part of the Mowrey's Oyster Bay Club (MOBC) and is subject to the Associations deed restrictions. The original deed restrictions were adopted on June 16, 1969.

Mr Seymour, Chairman of the Board of Directors of MOBC stated that Bella Mowry was the original owner of all the property and except for a few smaller parcels sold to family and friends all the lots were 10 acres. The

deed restrictions state that each lot may only be split once and each subsequent lot is are required to have 200 feet of water frontage.

Mr Scheel stated that the MOBC Associations deed restrictions can be amended at any time. Mr Seymour responded by stating that the chances of the deed restrictions being amended are less than zero.

Rik stated he did not believe the current owners, the Josephs, would ever want to split the lots again.

Mr Seymour stated that the homes are serviced by a private road owned by the Association. It is not an easement but rather property deeded to the Association by the original owners of each lot.

Jim Rudolph asked if the variance could be granted with the stipulation that the deed restrictions regarding the size of the lots, water frontage required, and the amount of splits allowed never be altered in respect to the lots in question. Mr Scheel stated that it could as long as it was supported by the ordinance. Rik stated that he believed his clients the Josephs would not have a problem with that.

Chair Hosler stated that the ZBA should review Section 7 of the Hayes Township Parcel Division Ordinance:

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 topographic or physical conditions that do not generally apply to other lots, parcels, or tracts of land in the township. **YES. The lots are located on Lake Charlevoix and according to the recorded deed restrictions each lot must maintain 200 feet of lake frontage.**
 - (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. **YES. The Hayes Township parcel division ordinance was adopted after the deed restrictions were placed on the property.**
 - (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. **YES. Most of the lots are of the same size and dimension.**
 - (4). The resulting lots, parcels, or tracts of land with the variance granted shall be compatible with surrounding lots, parcels, or tracts of land. **YES. Most of the lots are of the same size and dimension.**
 - (5). The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel. **YES. Because of deed restrictions this is the only way the lots may be split and still maintain the required 200 feet of water frontage.**
- (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.
- (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. **The deed restrictions numbered 3 (three), 6 (six), and 14 (fourteen), will be maintained in perpetuity as recorded on June 17, 1969, Liber 215, Pages 773-783 on this property.**

Violations of such conditions and safeguards shall be deemed a violation of this Ordinance, punishable under Section 9 of this Ordinance.

Chair Hosler stated the ZBA should review Section 7.05 C

ZONING BOARD OF APPEALS SECTION 7.05 C

- C. Variances - The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations.

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 a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure. **Not applicable.**
2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone. **YES. The other lots were split before the Township adopted the parcel division ordinance with the 4:1 length to width ratio.**
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 is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a

variance. **YES. The difficulty was created with the adoption of the Hayes Township parcel division ordinance.**

4. The appellant presents information showing that the requested variance:
 - a. Will not be contrary to the intent and purpose of the zoning ordinance; **YES. It will help maintain lower density.**
 - b. Will not cause a substantially adverse effect upon adjacent properties; **YES.**
 - c. Will relate only to the property under control of the appellant; **YES.**
 - d. Will not essentially alter the character of the surrounding area; **YES. The surrounding lots are approximately the same size or smaller**
 - e. Will not increase the hazard from fire, flood, or similar dangers, **YES and**
 - f. Will not increase traffic congestion. **YES. The property is located on a private road.**
5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zone district. **YES**
- D. In addition to the foregoing conditions, the following rules shall be applied in the granting of variances.
6. In granting a variance, the Zoning Board of Appeals may specify, in writing to the applicant such conditions in connection with the granting that will, in its judgment, secure substantially, the objectives of the regulations or provisions to which such variance applies. The breach of any such condition shall automatically invalidate the variance granted.

Jim Rudolph made a motion, supported by Brad Kessler to grant a variance from the standards of the 4:1 length to width ratio from Section 6 d, of the Parcel Division Ordinance for two (2) lot splits on property tax numbers 15-007-130-010-00 & 15-007-130-016-00 located at 07847 Indian Trails provided that the deed restrictions numbered 3 (three), 6 (six), and 14

(fourteen), be maintained in perpetuity as recorded on June 17, 1969, Liber 215, Pages 773-783 on this property.

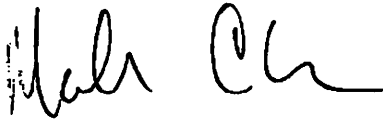
Roll Call:

Brad Kessler	Yes
Jim Rudolph	Yes
Scott Parker	Yes
Steve Wilson	Yes

Motion carried unanimously.

Jim Rudolph made a motion, supported by Scott Parker to adjourn at 8:25 p.m. Motion carried unanimously.

Respectfully submitted



Marlene Golovich, secretary
Hayes Township

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER**

Applicant: Indian Shores LLC
Hearing Date: February 13, 2008

The property identified by property tax numbers 15-007-130-010-00 & 15-007-130-016-00 located at 07847 Indian Trails, Charlevoix hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on February 13, 2008 and after giving due notice as required by law, the Board having heard the statements of the applicants representative and the Board having considered the following exhibits:

1. A Zoning Application dated January 5, 2008
2. A Certificate of Survey;
3. Deed Restrictions recorded June 17, 1969, Liber 215, Pages 773-783
4. Site Plan
5. A Notice of Hearing dated January 15, 2008
6. Publication in the Petoskey New Review January 23 and February 7, 2008.

GENERAL FINDINGS OF FACT

The Board finds there are two lots.

The Board finds there is an existing deed restriction

The Board finds the deed restriction was recorded and in force before the adoption of the Hayes Township parcel division ordinance.

The Board finds the difficulty was not created by an action of the applicant/owner.

The Board finds the variance will not alter the character of the surrounding area.

The Zoning Board of Appeals approves the findings from Section 7.05C of the Zoning Ordinance and the Board approves a variance from the standards of the 4:1 length to width ratio from Section 6 d, of the Parcel Division Ordinance for two (2) lot splits on property tax numbers 15-007-130-010-00 & 15-007-130-016-00 located at 07847 Indian Trails provided that the deed

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Marlene Golovich, secretary

Minutes approved as corrected 03/05/2008