

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
SIMON HEARING
February 23, 2005**

The Zoning Board of Appeals meeting was called to order by acting chair Joni Hosler at 7:30 p.m.

Members present were Fred Parsons, Joni Hosler, and Marlene Golovich. Also present were Lisa Zipp, secretary and Ethel Knepp, zoning administrator. Audience members present were Michael Simon, Nancy Simon, Jim McMahon, and Diane McMahon.

The purpose of this hearing was to hear a request from Michael and Nancy Simon for a 17 foot variance from Section 4.13B, rear yard setback regulations of the Zoning Ordinance to build a garage at 06921 Nine Mile Pointe Drive, property tax number 15-007-400-017-00.

Nancy Simon spoke about their request. They built their home in 1989 and at that time were required to build 100 feet back from the high water mark of Lake Michigan. They built a log home. Now they would like to build a garage, but don't have enough room on the roadside to meet setback requirements. The well is located on the lakeside and the septic field is located on the road side. They are very limited as to where they can put the garage. They do not want to attach the garage to the home. Their intent is to park vehicles in the garage.

Nearby property owners, Jim and Diane McMahon spoke in opposition to granting the variance due to public safety reasons (see attached letter). They stated they believed this could create a visual impairment and a physical obstruction to safety if there were vehicles parked in front of the garage. Jim McMahon also stated that he believed there were no other garages in the neighborhood that go into the setback. He thought a neighbor requested a variance at one time and was denied and had to change his plans. Jim and Diane McMahon further stated that they are not opposed to their neighbors having a garage, but are just against granting a variance to do so because of the safety issue. Jim stated if someone were walking along the road with a small child, pet, etc., someone driving on the road would have little time to react if a vehicle was parked in front of the garage obstructing the view.

Michael Simon stated that if you were to go down the road (Nine Mile Point Dr) any weekend, there are lots of cars parked along the road, and some in the driveways with their back ends parked right up to the road, and sometimes boats are parked along the road too. He stated you can park a full sized truck in front of the garage and still have about five (5) to the edge of the road.

The ZBA suggested attaching the garage to the house, or possibly a different location of attachment to the house which would reduce the variance needed. The Simon's stated they are against doing this for several reasons. First of all, they said it will nearly double their cost. They

were planning on putting cedar siding on the garage that would match the color of their log home (if detached), but they don't want to put log siding to match it more closely if it were attached because it is much more expensive. They also don't want to attach the garage because they believe doing so will disrupt the integrity of the log home. They were originally planning a bigger garage, but have already reduced the size of the garage and the distance between the house and garage. They can't build one on the well side, because it would block access to the well, and you need enough area to get a truck to the well. They can't build it to the other side in the front of the house because of the septic. Michael Simon reiterated that if you were to park a full size truck in front of the garage, there is still about five (5) feet of space behind the truck to the edge of the road. Ethel Knepp stated the setbacks are from edge of the road *Right of Way*, not the edge of the road or the centerline of the road.

The way the plan is now, there is only eight (8) feet from the garage to the edge of the road right of way. The ZBA felt that eight (8) feet was a safety concern if vehicles were parked in front of the garage.

Acting chair Joni Hosler read the criteria from the Zoning Ordinance Section 7.05(C) which must exist in order for the Board of Appeals to grant a variance:

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.
The 100' setback from the water made the house be built where it is.
2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.
The neighbors are more toward the water because they built earlier, when the setback used to be only 50 feet or 70 feet from the water.
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.
No. The setback was 100 feet when the house was built.
4. The appellant presents information showing that the requested variance:

- i. Will not be contrary to the intent and purpose of the zoning ordinance;
- j. Will not cause a substantially adverse effect upon adjacent properties;
- k. Will relate only to the property under control of the appellant;
- l. Will not essentially alter the character of the surrounding area;
- m. Will not increase the hazard from fire, flood, or similar dangers, and
- n. Will not increase traffic congestion.

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 does not find this to be true.

The Zoning Board of Appeals discussed item #5 at length. Is this variance the minimum necessary? All members of the board felt that it was not the minimum necessary.

Marlene stated that she also knew that log siding can be made to exactly match the home. Michael Simon stated he has looked into it and it nearly doubles the cost.

Marlene Golovich made a motion, supported by Fred Parsons, to deny Michael & Nancy Simon's request for a 17 foot variance from Section 4.13B rear setback regulations of the Zoning Ordinance based on the above cited #5 of Section 7.05(C).

ROLL CALL VOTE:

Joni Hosler	Yes
Fred Parsons	Yes
Marlene Golovich	Yes

MOTION CARRIED. The request for the 17 foot variance is **DENIED**.

Michael Simon asked Ethel if he were to buy the property across the street, could he put up a garage? Ethel stated that if it was more than one acre, yes. If it was less than one acre, no, not without a residence. That is a zoning ordinance change due what was happening at Susan Shores approximately 5 years ago.

Nancy Simon stated they do not want to attach the garage to the house, but want to leave their options open.

Marlene Golovich made a motion, supported by Fred Parsons, to grant an eleven (11) foot rear setback variance from Section 4.13B of the Zoning Ordinance based on their findings of Section 7.05(C).

ROLL CALL VOTE:

Joni Hosler	Yes
Fred Parsons	Yes
Marlene Golovich	Yes

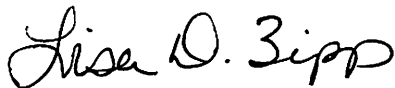
MOTION CARRIED.

This hearing was concluded.

In regular business, the Zoning Board of Appeals elected officers. Joni Hosler nominated Jim McMahon as chair of the ZBA. Marlene Golovich supported the nomination. Jim McMahon was elected unanimously. Marlene Golovich nominated Joni Hosler as vice chair of the ZBA. Fred Parsons supported the nomination. Joni Hosler was elected unanimously.

Joni Hosler made a motion, supported by Fred Parsons to adjourn the meeting. Without objection, the meeting was adjourned at 8:23 p.m.

Respectfully submitted,



Lisa D. Zipp, secretary

3-9-05 Minutes approved as written.

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS**

DECISION AND ORDER

Applicant: Michael and Nancy Simon
Hearing Date: February 23, 2005

The property is identified by the tax number 15-07-400-017-00. Hereinafter referred to as the "property".

The Board having considered the application, a public hearing having been held on February 23, 2005 after giving due notice as required by law, the Board having heard the statements of the Applicant and the Board having considered the following exhibits:

1. A Zoning Application from Michael & Nancy Simon dated 8/27/04 with drawing;
2. A letter from Jim and Diane McMahon.

GENERAL FINDS OF FACT

1. The Board finds that there is an existing house which is setback at least 100 feet from the high water mark of Lake Michigan;
2. The Board finds that a garage built as proposed by Michael & Nancy Simon's application would not be able to meet the rear yard setback requirement of the Zoning Ordinance;
3. The Board finds the garage as proposed would leave eight (8) feet from the front of the garage to the edge of the road right of way;
4. The Board finds there is a public safety concern in granting the 17 foot variance as requested;
5. The Board finds that parking vehicles in front of the garage in the event of visitors may cause a public safety concern;
6. The Board finds that attaching the garage to the house would reduce the variance needed to eleven (11) feet;
7. The Board finds that an eleven (11) foot variance to the rear yard setback requirements within the zone district is the minimum necessary to build a garage and will permit reasonable use of the land within the zone district.

The Board approves the findings from Section 7 of the Zoning Ordinance and the Board approves an eleven (11) foot variance from Section 4.13B, Rear Yard Setback Requirements of the Hayes Township Zoning Ordinance for property tax number 15-07-400-017-00.