

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
NOVEMBER 11, 1998

The Zoning Board of Appeals hearing was called to order at 7:34 P.M. by chair Roger Stoppel at the Hayes Township Hall, 09195 Old 31, Charlevoix.

ZBA members present were Marlene Golovich, Fred Parsons, Joni Hosler, Roger Stoppel, and Jim Rudolph who was filling in as the representative from the Planning Commission.

Also present were Kevin J. Whitley, Ethel Knepp, and James Ray.

The purpose of the hearing is to hear a request by James Ray for an 11 foot variance from the Hayes Township Zoning Ordinance Section 4.13B which requires all new construction to be setback at least 15 feet from the side lot line. The property is in the R-3 zone, located on Spring Street in the Plat of Bayside. The tax number is 15-007-200-010-00.

The applicants are proposing to construct a 16' by 30' addition for 2 bedrooms upstairs, 1/2 bath, and kitchen expansion to an existing A-frame residence.

James Ray explained that they have owned the house since 1968 when they bought it for a summer home and now they are ready to retire and desire a bigger house. James stated that the A-frame construction was used for several houses on this street and the design presents unique expansion challenges. James decided to design his expansion in this way because the house on lot 7 was expanded the same way.

Ethel Knepp stated that the house on lot 7 has a 10' setback. Ethel asked James if he owns lots 8 and 9 since the Township tax roll has identical names and addresses for lots 8, 9, and 10.

James Ray explained that he owns lot 10 jointly with his brother and lots 8 and 9 were bought at a separate time by James and his wife so the ownership of lot 10 is completely separate from lots 8 and 9.

Roger Stoppel asked about future plans for lot 9 because if it is always left empty the setback could be over 60 feet instead of 4.

James Ray stated that he can not predict future plans but he wants to keep the right to build another house on lots 8 and 9.

There was no written letters from the public and no one other than the applicant attended this hearing.

Roger Stoppel read the criteria from the Zoning Ordinance Section 7.05C which is required to grant a variance and the ZBA provided the answers:

1. Will not be contrary to the public interest or to the spirit and intent of this ordinance. It could be contrary to the public interest because the addition will be so close to the lot line.

2. Shall not permit the establishment within a zoning district of any use which is not permitted by right within that district. Yes, applicant is not changing the use which is allowed.

3. Will not cause any adverse effect to property in the vicinity or in the zoning district or the Township. It could effect the adjacent property.

4. Relates only to property that is under control of the applicant. Yes.

5. Affects only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity, and have not resulted from any act of the applicant. This could be the result of an act of the applicant proposing an expansion so close to the line.

Roger Stoppel stated that two houses could be eight feet apart if a four foot setback is approved for both lots 10 and 9 and that short distance would be contrary to the spirit and intent of the ordinance.

Jim Rudolph suggested that James Ray split lot 9 into two pieces and combine one piece with lot 8 and one piece with lot 10 and then the applicant would have room to build this expansion and build another house without any variances. Jim predicted that having two larger lots instead of three smaller lots would be better for the Township.

Fred Parsons stated that the variance request would be contrary to spirit and intent of the ordinance because the expansion would be too close to the line, the problem is self created, and there are no natural obstructions to expanding in a different direction.

Roger Stoppel noted that this variance request is larger than most of the recent variance approvals. Roger also asked if the drop off shown on the plan is indicating that the house could not be expanded to the North.

James Ray stated that he does not want to build over the large drop off to the North and he can't expand into the lake front setback of 100 feet.

Ethel Knepp stated that the Township should avoid setting a precedent of approving this small setback because the distance between structures is needed for emergency purposes.

Marlene Golovich reminded the applicant that he has the choice of building a smaller expansion with out a variance or with a smaller variance.

Joni Hosler stated that the house could be expanded to the South without a variance.

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DECISION AND ORDER

Applicant: James Ray

Hearing Date 11-11-98

The property of James Ray identified by the tax number 15-007-200-010-00.

hereinafter referred to as the "property".

Application seeks a 11 foot variance from section 4.13B of the Zoning Ordinance. Applicant needs the variance to build an expansion to an existing house.

The Board having considered the Application, a public hearing having been held on 11-11-98, after giving due notice as required by law, the Board having heard the statements of the Applicant, the Board having considered 5 exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned R-3 under the Zoning Ordinance.

2. The Board finds that under section 4.13B of the zoning ordinance a variance is needed.

3. The Board finds that the Applicant desires a 11 foot variance from the side yard setback requirement to allow an expansion to an existing house which would leave a 4 foot setback.

The Board makes the following findings of fact as required by section 7.05C of the zoning ordinance for each of the following standards listed in that section.

1. Will not be contrary to the public interest or to the spirit and intent of this ordinance.

a. the Board finds that a 11 foot variance will be contrary to the public interest or to the spirit and intent of the Zoning Ordinance because of the following reasons:

1. The 4 foot setback would place the structure close to the lot line and that could hinder emergency personnel.
2. The 4 foot setback could effect the adjacent property owners if James Ray ever sells the adjacent lot.

3. The 4 foot setback approval could set a precedent which could result in a house on the adjacent lot being 8 feet from this house.
 4. The applicant owns and controls lots 8 and 9 which are both 60 foot lots and the applicant could request a split of lot 9 into two pieces so the pieces could be combined to lot 8 and lot 10 which would allow the applicant to build the proposed expansion without a variance and build another house without a variance.
 5. The applicant could build a smaller expansion with out a variance or with a smaller variance.
 6. The applicant could remove the roof and expand up without a variance.
 7. The applicant could expand to the South without a variance.
2. Shall not permit the establishment within a zoning district of any use which is not permitted by right within that district.
- a. The Board finds that granting a variance will not permit the establishment within a zoning district of any use which is not permitted by right in that district because the district is R-3 and that is how the property is being used.
3. Will not cause any adverse effect to property in the vicinity or in the zoning district or the Township.
- a. The Board finds that a variance could cause adverse effect to property in the vicinity or in the district or the township.
4. Relates only to property that is under control of the applicant.
- a. The Board finds that the variance relates only to the property that is under control of James Ray.
5. Affects only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity, and have not resulted from any act of the applicant.
- a. The Board finds that the variance request could be the result of an act of the applicant.

UPON MOTION MADE BY FRED PARSONS TO APPROVE THE FINDINGS OF FACT AND DENY THE 11 FOOT VARIANCE, SECONDED BY JONI HOSLER, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE DENIED.

ROLL CALL VOTE:

MARLENE GOLOVICH	YES
JIM RUDOLPH	YES
JONI HOSLER	YES
FRED PARSONS	YES
ROGER STOPPEL	YES

The minutes of the 10-14-98 ZBA hearing were presented and they will be reviewed for approved at the next ZBA hearing.

MOTION TO ADJOURN. THE HEARING WAS ADJOURNED.

Respectfully Submitted

Kevin J. Whitley
Kevin J. Whitley, Secretary