

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
JUNE 16, 1999

The Zoning Board of Appeals hearing was called to order at 7:36 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, Nancy Nash.

Also present were Kevin J. Whitley, Ethel Knepp, Bryan Grahams, Jim Harrison, Joe Quandt, Tim Boyko, Tom Binstadt, Ed Abts, Robin Johnson, Janet Simon, Blake Enbody, Doug Foltice, Adela Foltice, Betty Zipp, Bud Zipp, Larry Laske, Bert Southwood, Ethel Kerner, Della Johnson, Shelly Vanwert, Grant Motshall, J. Wyatt Gordon, Lori Lorosa, Chris Larosa, Dorman Robinson, Glenn Tarrant, Gary Field, Bob Tripp, Mike Rostar and others who failed to register with the secretary because of their choice or because they came in late.

Chair Roger Stoppel dispensed with the reading of the minutes of the last ZBA meeting (4-14-99) and the minutes of the April 14, 1999 ZBA meeting were approved as presented without objection.

The purpose of the hearing is to hear a request from James R. Harrison of the Bay Shore Food Market for a 31 foot variance from Section 4.13B, lot area regulations (rear setback) to construct a new store which will be setback 4 feet from the rear property line, and a variance from Section 5.12, Landscaping and visual buffers. The applicant is requesting that no landscaping or visual buffers be required. The property is zoned C-1 located at 06012 and 06026 US 31 on the SW corner of US 31 and Townline Road. The property tax numbers are 15-07-153-001-00, 15-07-153-007-10, and 15-07-153-007-50.

Joe Quandt, attorney for Jim Harrison, presented the site plan. Joe explained that a variance was approved for this project in 1996 as part of a five year plan to rebuild this business but the building was never built and now they have increased the variance request and are reapplying for what has essentially been approved before.

Joe Quandt stated that they are also requesting that no landscaping or visual buffers be required. The applicant believes that the approved site plan is still valid and they want to start construction this fall.

Joe Quandt listed the practical difficulties that will not allow the building to be built without these variances: 1. The lot is so shallow that it would be essentially impossible to build anything on this lot and maintain a 35 foot rear setback. The property is unique because there is no other commercial uses on this block. 3. Jim Harrison, the applicant did not create the size of the lot. 4. These variance requests would not be contrary to the intent and purpose of the Ordinance because they would allow the historical use of this property to continue. Will not cause substantial adverse effect on adjacent property because he will be continuing with a use that already exists. The request only relates to property under control of Jim Harrison.

Joe Quandt continued by saying that the request: 5. Will not increase the hazards but will substantially improve the conditions of the site. Joe explained that it is now difficult to make a left turn onto US 31 out of this business because the current store blocks the view. This new store will allow Jim to remove the current store building. The traffic situation will be improved by removing the current store as long as the Township does not require a green belt to be planted along the eastern property line which would block the view of traffic along the highway. This plan was design to decrease congestion and provide for more smooth vehicular traffic on the site as well as onto the alley and the highway.

Joe Quandt continued by saying that the rear setback variance is 4 feet more that the last approved rear setback variance because the store was moved back on the plan. This new plan shows the minimum setback needed to provide room in front of the store for parking and backing out of parking spaces without causing congestion with the traffic at the fuel pumps and without causing accidents.

Fred Campbell, architect who drew the site plan, explained that the building would be reduced to 32 by 108 feet to allow a fifteen foot side yard setback on the west. The eastern side of the building is limited by underground fuel pipes, which the applicant does not want to disrupt during construction. The fifteen foot setback on the West is needed to allow room for large trucks to drive up to the diesel pump. Fred stated that they want to avoid using angle parking in front of the store because that creates one way traffic and they are going to have two way traffic, which creates the need for the smaller rear yard setback. The building will be wood frame with a concrete block and windows store front. It will have a full basement for storage.

Bryan Graham, attorney for Hayes Township asked for some clarifications regarding this project.

Joe Quandt responded that the site plan includes lot 1, lot 2, lot 7 and the eastern 25 feet of lot 8 and all of this property will be considered a combined unit for the purpose of this variance request. Joe listed the unique characteristics of this property: the lot is shallow, and landscaping will block view of alley and the highway. Joe acknowledged that the ordinance allows a fence to be substituted for landscaping but he questioned why the Township would consider the aesthetics of a fence more important than safety.

Mike Rostar, spoke in favor of granting the requested variances because it will improve the situation over what is there now.

Chair Roger Stoppel read the Zoning Ordinance Section 5.12.

Bob Tripp spoke in favor of granting the variances because he believes placing buffers on this property will create a dangerous traffic situation.

Wyatt Gordon asked the ZBA to consider the fact that the current store building will be removed and this will improve the safety of the entire property so the requested variances should be granted.

Larry Laske asked the ZBA to consider safety over all other requirements and grant these variances.

Ethel Knepp informed the ZBA about the surrounding zones and uses: The property to the South is zoned and used for residential purposes. The property to the East across Townline Road is a different Township, a different County, probably zoned residential and used for a single family resident behind a large hedge. The property to the West is zoned R-3 residential and used for a single family home owned by Jim Harrison, the applicant.

Nancy Nash, ZBA member and Chair of the Hayes Township Planning Commission tried to assure everyone present that the Planning Commission and other Township officials would never allow ascetic goals to supersede safety. Nancy Nash continued by saying that the health and welfare of the public is always considered when making decisions and the PC would not require a fence or any buffer that would block the line of sight for traffic. Nancy Nash asked everyone to consider the light, noise, dust and other intrusions this business may place upon close neighbors. Nancy acknowledged that removing the current store building and paving the entire property will improve many of the problems with the store as it is now but the house to the East that will remain will limit the line of sight because it is about 25 feet off of U.S. 31.

Adela Foltice asked the ZBA to consider the safety of the children who ride bicycles to this store.

Dorman Robinson asked the ZBA to emphasize the safety of this area and grant the variances.

Chair Roger Stoppel acknowledged the two letters received from neighbors. Both letter were in opposition to the variances and the letters were entered into the record: Harold and Doris Baird Jr. wrote "We as property owners, close enough for visual. We are firm that James Harrison is to landscape and place buffers. Buffers are necessary for the neighborhood appearance and protection of other surrounding properties. The 31 ft. variance should not be accepted. If request is accepted, (which should not be). Who will police the situation to be done as requested by zoning regulations? Without Buffers. This could become an eyesore for the community to look at daily. Most generally, when a situation is set in cement, it becomes very hard to remove or change the status."

John Krupa, the another neighbor wrote: "Why are zoning laws made if we are to make exceptions for certain people? I don't agree with giving James Harrison's request to not have any landscaping and visual buffers. The people that live near this project have to look at it, including me. Also, it would help to reduce some of the noise and maybe keep some of the trash that drifts in from over that way from coming into our yard. It would be great to see that corner cleaned up.

Chair Roger Stoppel closed the public comment part of this hearing.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: James R. Harrison

Hearing Date 6-16-99

The property of James R. Harrison identified by the tax numbers 15-007-153-001-00, 15-007-153-007-10, 15-007-153-007-50.

Hereinafter referred to as the "property".

Applicant seeks a 31 foot variance from Section 4.13B of the Zoning Ordinance. Applicant needs the variance to build a new store building that will be setback 4 feet from the rear property line.

Applicant also seeks a variance from Section 5.12 of the Zoning Ordinance. Applicant requests that no Landscaping or visual buffers be required.

The Board having considered the application, a public hearing having been held on 6-16-99, after giving due notice as required by law, the Board having heard the statements of an attorney representing the applicant, the Board having heard from an architect representing the applicant, the Board having heard verbal statements from 6 members of the public, the Board having heard from the Hayes Township Zoning Administrator, the Board having heard from the Township attorney, The Board having read two letters received from neighbors, the Board having considered the following 16 exhibits:

A Hayes Township Zoning application and permit with a receiving date of 5-18-99;

A public notice from Ethel R. Knepp, Township Clerk;

A partial plat of Bayshore dated 5-21-99;

A letter from Julie Harrison, attorney, dated 5-17-99;

A letter from Ethel Knepp addressed to all property owners with 300 feet of the property dated 5-21-99;

An affidavit of mailing from Ethel Knepp to the ZBA dated 4-20-99;

A letter from Ethel Knepp to the ZBA dated 4-20-99;

Staff comments from Ethel Knepp undated;

A letter from Ethel Knepp to Julie Harrison dated 4-14-99;

A letter from Julie Harrison to Ethel Knepp dated 4-8-99;

A letter from Ethel Knepp to Julie Harrison dated 3-18-99;
A default judgment from the Circuit Court for the County of Charlevoix dated 4-2-98;
A warranty deed dated 7-27-98;
A quit claim deed dated 4-27-85;
A letter from Joseph Quandt to Ethel Knepp dated 4-23-99;
A site Plan dated 4-22-99;
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 C-1 under the Zoning Ordinance.
2. The Board finds that section 4.13B of the Zoning Ordinance requires that new structures be setback 35 feet from the rear property line.
3. The Board finds that Section 5.12 of the Zoning Ordinance requires Landscaping and Visual Buffers.
4. The Board finds that the Applicant desires a variance from Section 4.13B to allow the construction of a new building to be setback 4 feet from the rear property line.
5. The Board finds that the Applicant desires a variance from Section 5.12 to allow construction of a new building without any landscaping or visual buffers.
6. The Board finds that the property to the South is zoned R-3 and used for residential purposes. The property to the West is zoned R-3 and is occupied by a single family residence owned by the applicant. The property to the East is a different County, a different Township, and most likely zoned residential and used for residential purposes. The property to the North is zoned A-1 and is vacant.
7. The Board finds that the applicant's property subject to the variance is 123.46 feet by 208.66 feet. The property is approximately one half acre.
8. The Board finds that the Zoning Ordinance requires a minimum of one acre for a lot in the C-1 zone.
9. The Board finds that the applicant is proposing a new Bay Shore Food Market building to be 32 feet by 107.5 feet
10. The Board finds that the proposed site plan includes lot 1, lot 2, lot 7, and the eastern 25 feet of lot 8 with the numbers 15-007-153-001-00, 15-007-153-007-10, and 15-007-153-007-50.

11. The Board finds that the property is boarded on the North by U.S. 31, on the South by a public alley, and on the East by Townline Road which is sometimes referred to as Bay Street.

12. The Board finds that the information on the site plan dated 4-22-99 is accepted as a findings of fact.

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. 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 property is shallow and less than one acre and that the location of the existing fuel pumps and the desire to have parking in front of the store prevent the location of the building with a rear yard setback of 35 feet.

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 a commercial use is unique for this area and other C-1 zoned lots are not this shallow.

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 property is part of a platted subdivision which was created prior to zoning and was not created by this applicant.

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

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

a. The Board finds that the applicant has demonstrated that the proposed building and fuel pumps location will be safer to the public than the existing store location.

b. The Board finds that the variance will allow a permitted use.

B. Will not cause a substantially adverse effect upon adjacent properties.

a. The board finds that the variance will allow the continued use of an existing business.

b. The Board finds that a rear yard setback reduced to 4 feet will not adversely effect the adjacent properties.

c. The board finds that the traffic safety will be improved for the adjacent properties.

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

a. The board finds this to be true.

D. Will not essentially alter the character of the surrounding area.

a. The Board finds that the character will not be altered because the variance will allow the continued use of an existing business.

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

a. The Board finds that the fire hazard will be decreased because an old building will be replaced by a new building.

b. The Board finds that the variance will improve traffic and parking safety.

c. The Board finds that the location of the proposed building will be farther from the fuel pumps than the current store is and this will reduce the fire danger.

F. Will not increase traffic congestion.

a. The Board finds that the variance will decrease traffic congestion by allowing parking perpendicular to the store and creating more room for vehicles to maneuver in the parking lot.

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 variance is the minimum necessary to provide for the proper turning radius, allow parking in front of the store and maintain traffic safety.

Conditions:

The above requested variance will be subject to the following conditions:

1. The existing building which houses the current Bay Shore Food Market will be completely removed from the property within 3 months of functional occupancy of the new building unless practical difficulties require more time in which case the existing building shall be removed no longer than 6 months after functional occupancy of the new building.

2. The three lots listed on the application, each with a unique property tax identification number, will be considered one development site for zoning purposes. The three lots will not need to be legally combined because the Board recognizes the need for the applicant to keep these lots separate so the contamination problems of the past are kept separate.

UPON MOTION MADE BY FRED PARSONS TO GRANT A 31 FOOT REAR YARD VARIANCE TO ALLOW THE CONSTRUCTION OF A NEW BAY SHORE FOOD MARKET WITH THE REAR SETBACK OF 4 FEET BASED ON THE ABOVE FINDINGS OF FACT AND CONDITIONS, SECONDED BY JONI HOSLER, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE GRANTED.

ROLL CALL VOTE:

NANCY NASH	YES
JONI HOSLER	YES
FRED PARSONS	YES
MARLENE GOLOVICH	YES
ROGER STOPPEL	YES

Time period for judicial review

MCLA 125.293a; MSA 5.2963(23a) provides that a person having an interest affected by the zoning ordinance may appeal a decision of the Zoning Board of Appeals to the Circuit Court. Pursuant to MCR 7.101 any appeal must be filed within twenty-one days after the Decision and Order is adopted by the Zoning Board of Appeals.

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Applicant also seeks a variance from Section 5.12 of the Zoning Ordinance. Applicant request that no landscaping or visual buffers be required.

The Board having considered the application, a public hearing having been held on 6-16-99, after giving due notice as required by law, the Board having heard the statements of an attorney representing the applicant, the Board having heard from an architect representing the applicant, the Board having heard verbal statements from 6 members of the public, the Board having heard from the Hayes Township Zoning Administrator, the Board having heard from the Township attorney, The Board having read two letters received from neighbors, the Board having considered the following 16 exhibits:

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3. The Board finds that Section 5.12 of the Zoning Ordinance requires Landscaping and Visual Buffers.
4. The Board finds that the Applicant desires a variance from section 4.13B to allow the construction of a new building to be setback 4 feet from the rear property line.
5. The Board finds that the Applicant desires a variance from section 5.12 to allow construction of a new building without any landscaping or visual buffers.
6. The Board finds that the property to the South is zoned R-3 and used for residential purposes. The property to the West is zoned R-3 and is occupied by a single family residence owned by the applicant. The property to the East is a different County, a different Township, and most likely zoned residential and used for residential purposes. The property to the North is zoned A-1 and is vacant.
7. The Board finds that the applicant's property subject to the variance is 123.46 feet by 208.66 feet. The property is approximately one half acre.
8. The Board finds that the Zoning Ordinance requires a minimum of one acre for a lot in the C-1 zone.
9. The Board finds that the applicant is proposing a new Bay Shore Food Market building to be 32 feet by 107.5 feet
10. The Board finds that the proposed site plan includes lot 1, lot 2, lot 7, and the eastern 25 feet of lot 8 with the numbers 15-007-153-001-00, 15-007-153-007-10, and 15-007-153-007-50.
11. The Board finds that the property is bordered on the North by U.S. 31, on the South by a public alley, and on the East by Townline Road which is sometimes referred to as Bay Street.
12. The Board finds that the information on the site plan dated 4-22-99 is accepted as a findings of fact.

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. 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 the Zoning Ordinance section 5.12 allows a fence to be substituted for landscaping.

b. The Board finds that a fence could be built next to the property line.

c. The Board finds the shallowness of the lot does not preclude the placement of a fence on the property line.

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 is not unique because other property in the C-1 zone could use a fence as a visual barrier.

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 property is part of a platted subdivision which was created prior to zoning and was not created by this applicant.

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

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

a. The Board finds that intent and purpose of the landscaping and visual barrier in the Ordinance is to protect the rights of neighbors of dissimilar uses.

b. The Board finds that the use of the subject property will be C-1 commercial and the Board finds that the uses of property to the East and South are residential.

c. The Board finds that the objectives of Section 5.12 are to screen lighted areas and unattractive features; to prevent glare from buildings, cars, and other sources; to reduce noise and stabilize soils; to define access and circulation; to control air pollution by the absorption of noxious gases and the release of oxygen; to decrease wind velocity and increase surface water retention; to enhance or focus attention toward a feature of a building or development sight; to provide visual buffers between incompatible land uses; to provide for the visual enhancement of building walls, parking areas and roads; and to provide for the addition of wildlife habitat and natural color to elements of the built environment which would otherwise not be provided.

d. The Board finds that vehicle activity will take place at night on this property and lights from vehicles may shine onto neighboring property without a visual buffer.

e. The Board finds that eliminating the landscaping and visual buffer requirement for this application will be contrary to the spirit and intent of the Ordinance

B. Will not cause a substantially adverse effect upon adjacent properties.

a. The board finds that the variance will cause adverse effect if the vehicle lights are allowed to shine onto neighboring property.

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

a. The Board finds this to be true.

D. Will not essentially alter the character of the surrounding area.

a. The Board finds that the character will not be altered because the variance will allow the continued use of an commercial business located in a residential neighborhood.

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

a. The Board finds that the variance will not increase these hazards because the variance will allow the continued use of an existing business.

F. Will not increase traffic congestion.

a. The board finds no relation between the requirement for landscaping and visual buffers and 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.

a. The Board finds that the application is to completely eliminate the requirement for landscaping and visual buffers which can not be the minimum necessary because some visual barriers are necessary.

UPON MOTION MADE BY MARLENE GOLOVICH TO DENY THE VARIANCE TO ELIMINATE THE REQUIREMENT FOR LANDSCAPING AND VISUAL BARRIERS FOR JIM HARRISON BASED ON THE ABOVE FINDINGS OF FACT, SECONDED BY JONI HOSLER, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE DENIED.

ROLL CALL VOTE:

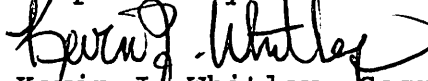
FRED PARSONS	YES
JONI HOSLER	YES
NANCY NASH	YES
ROGER STOPPEL	YES
MARLENE GOLOVICH	YES

Time period for judicial review

MCLA 125.293a; MSA 5.2963(23a) provides that a person having an interest affected by the zoning ordinance may appeal a decision of the Zoning Board of Appeals to the Circuit Court. Pursuant to MCR 7.101 any appeal must be filed within twenty-one days after the Decision and Order is adopted by the Zoning Board of Appeals.

CHAIR ROGER STOPPEL ADJOURNED THE MEETING.

Respectfully Submitted


Kevin J. Whitley, Secretary