

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
HEARING
DECEMBER 11, 1996

The Zoning Board of Appeals Hearing was called to order at 7:45 P.M. by Chair Jerry Simpson at the Hayes Township Hall, 09195 Old 31, Charlevoix.

Zoning Board of Appeals Members present were Doug Kuebler, Jerry Simpson, Robert Alexander Steve Wilson, and Roger Stoppel.

Also present were Zoning Administrator Ethel Knepp, Kevin J. Whitley, Frank Schultz, Tim Boyko, and Fred Parsons.

The purpose of this hearing is to hear a request for a variance from Section 5.13A setback from a stream. Frank Schultz is proposing to build a house with attached garage on property number 15-007-310-022-00 located in Birdland Estates in the R-1 zone. The residence and garage will be supported by pilings and will be at least 62.75 feet from the Woods Creek and 130 feet from Lake Charlevoix.

Frank Schultz was present to request this variance. Frank stated that their may be a minor change to the site plan.

Ethel Knepp explained that the ZBA has two different site plans for this project but the MDEQ has only approved the one plan.

Frank Schultz stated that he is still negotiating with the DNR on this project. Frank also stated that he is asking for the garage to be built on fill but the MDEQ has only approved the garage to be built on pilings. Frank stated that he may not build with this site plan.

Robert Alexander asked if Frank is still asking for fill under the garage.

Frank said he is not going to ask for fill under the garage but he may change to a smaller house which would require a longer driveway.

Roger Stoppel stated that the ZBA needs a correct site plan and he does not believe the ZBA should approve variances based on a site plan that may change. Roger Stoppel is not prepared to vote until he has the final site plan.

Frank asked the ZBA to approve variances based on the site plan they have and he said that it is the final plan.

Ethel Knepp informed the ZBA that Frank will replant vegetation in the shoreline protection strip along Lake Charlevoix. Ethel stated that Frank will grant a conservation easement to the MDEQ for the remaining open portion of the parcel.

Frank stated that the MDEQ approved a setback of 20 feet from the south property line but he wanted a 26 foot setback to save existing trees.

Steve Wilson asked how long Mr. Schultz has owned this parcel.

Frank stated that he bought the property around 1990 and has been trying to get permits since then. The Subdivision was plotted in 1959 and this lot was split in 1965.

Steve Wilson acknowledged that letters from neighbors alleged that Frank knew that lot could not be built upon when he bought the property.

Frank responded that he would not have bought the lot if he knew he could not built a house on it.

Chair Jerry Simpson acknowledged letters from neighbors regarding this site plan and variance request:

1. George and Elizabeth Valentine, who own the adjacent lot to the South (lot 23) stated in their letter that they "...are unable to attend the hearing...", "...do not see that there is any reason to grant the variances...", "...concerned about the progressive clearing...", "...greater disturbance to the ecology of a wetland with building here. It does not seem to be 'in the public interest' to further destroy the natural growth and wildlife habitat..." "...on stilts, seems to us to be a rather unattractive structure...", and "...could well impact unfavorably on other property values...".

2. Paul Stanford, owner of lot 21, wrote in his letter: "...unable to attend...", "...opposed to the granting of a 7' height...", "...extremely distasteful not in keeping with the surrounding residences...", "...structure itself were changed from a rectangle design, would a variance even be necessary...", "...set a precedent...", "mandatory that the restoration of the strip be completed.", "...seriously reduce the value of surrounding residences...", and "...structures that would diminish the value and aesthetics inherent to this area. As a board, it is your duty to safeguard these rights."

3. Thomas and Judith Niswonger, owner of the lot adjacent to the North, wrote: "...unable to attend...", "...we did not want to see any building on that lot due to it's extremely low and wet...", "...allowing a dwelling to be built so much higher that the lot level it will look out of place, be unpleasant to look at and the entire area under the house will be a breeding ground for mosquitos...", "...negatively affect neighboring home values...", "...all the homes in the area in recent years are more appealing.", "...large distance variance from the creek to the house should be denied...", "...smaller garage...", and "...expect the township to require a re-planting of these protection strips...".

4. Gerald and Karen Saxton, owners of lots 25 and 26 wrote: ...We support (Niswonger's) letter 100%.", "...Schultz removed existing trees and shrubs on his property created a costly problem for Birdland Estates Assoc...".

All four letters will be kept with the Minutes as the official record of this hearing.

Frank stated that he would not have bought the property if could not build a house on it. Frank also stated that he has a right to ask for the variances so he has reasonable use of his property. Frank Schultz reminded the ZBA that the DNR's policy to deny the permit was not based on a law.

Robert Alexander concluded that the Administrative Judge is requiring the DNR to allow a house because that would be a reasonable use. Robert also stated that the house could be moved to reduce the variance needed or a smaller house might eliminate the need for a variance from the creek setback. Robert reminded the ZBA that they could require plantings to protect the creek and require planting around the house in consideration of the neighbors concerns.

Frank Schultz stated that the house will be four feet above the grade of 583 and the garage will be at grade level which is 583 feet.

Doug Kuebler stated that the ZBA should consider that the DNR will allow a house to be built and that the pilings construction will not disturb the wetlands.

Steve Wilson stated that the hardship is self imposed because this owner bought the property after the Zoning Ordinance was in effect.

The ZBA attempted to determine if an elevation variance is required for this house. ZA Ethel Knepp stated that an elevation variance is not needed because the house will be at elevation 590 feet.

Jerry Simpson reminded the ZBA that variances granted must not be contrary to the public interest and the four neighbor's letters conclude that this project would be contrary to the public interest.

Roger Stoppel won't approve the variance because a house six feet off of the ground is too high and the ZBA does not have a current plan with the elevations correctly indicated.

Chair Jerry Simpson read the criteria from the Zoning Ordinance required before the ZBA can grant a variance.

ROGER STOPPEL MADE A MOTION TO DENY THE VARIANCE REQUEST BECAUSE 100 CUBIC YARDS OF FILL WILL NOT BE ENOUGH TO BUILD A DRIVEWAY TO A GARAGE THAT IS 6 FEET ABOVE GRADE. MOTION SECONDED BY STEVE WILSON.

STEVE WILSON AMENDED THE MOTION TO INCLUDE MORE REASONS FOR DENIAL: THE VARIANCE REQUEST VIOLATES THE SPIRIT AND INTENT OF THE ORDINANCE. THE VARIANCE REQUEST WILL HAVE AN ADVERSE EFFECT ON THE NEIGHBORS, AND THE HARDSHIP IS SELF IMPOSED.

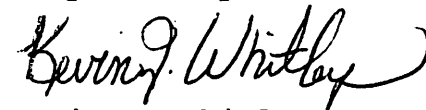
ROGER STOPPEL AGREED TO THE MOTION AMENDMENT.

ROGER STOPPEL AND STEVE WILSON WITHDREW THE MOTION.

ROBERT ALEXANDER MADE A MOTION TO TABLE FRANK SCHULTZ'S VARIANCE REQUEST UNTIL MORE INFORMATION IS PRESENTED TO THE ZBA INCLUDING A SITE PLAN WITH ELEVATIONS. THE ZBA WILL SCHEDULE A MEETING NO SOONER THAN 2 WEEKS AFTER RECEIVING THE REQUIRED INFORMATION. JERRY SIMPSON SECONDED THE MOTION. MOTION APPROVED UNANIMOUSLY.

THE HEARING WAS ADJOURNED AND A NEW DATE WILL BE SCHEDULED.

Respectfully Submitted,


Kevin J. Whitley