

**HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
September 15, 1993**

The meeting was called to order by Chairman Simpson at 7:33 pm.

Board Members present were Jerry Simpson, Timothy Boyko, Douglas Kuebler, Joe Rivard, and Robert Alexander. Also present were Zoning Administrator Parsons, Clerk Knepp, Builder Chris Carson, Thomas and Susan Pyke, and Mrs Wickowski.

The purpose of the hearing was to hear a request from Thomas and Susan Pyke for a seven (7) foot side yard variance from Section 4.13(B) of the Zoning Ordinance in the R-1 Zone District. The property is in Section 3, property tax number 15-007-003-016-00. The applicant proposes to construct a 19' x 16'6" addition to their residence.

The application, including a location survey drawing and photographs, and a letter from the applicants explaining the proposal were submitted for review.

The Clerk, acting as Secretary, noted that five property owners who's property was within three hundred (300) feet of the subject property was notified of the application and a notice of hearing was published in the Petoskey News Review on August 26, 1993 and September 10, 1993. Clerk Knepp stated that two adjacent property owners contacted her, either in person or by telephone, and both stated that they didn't feel the addition would negatively impact their property.

Chairman Simpson asked for a report and recommendations from the Zoning Administrator. Parsons stated that he recommended to the Pyke's that they apply for a variance again (prior variance application was in January, 1992) because the prior application was for a larger addition, which was denied. Even downsizing the plan a corner of the addition will infringe within the fifteen (15) foot setback area. This is not a condition that was created by the applicant. The cottage was built in the mid-1950's as one of seven rental units on one parcel of property. In the early 60's the prior owner individually sold each cottage and the lot lines were laid out. Parsons stated that the Section of Lake Charlevoix has several "weird" shaped lots and they used to flop lines wherever they wished. They didn't give any consideration to the day we'd have setbacks. Other variances have been granted that created more serious encroachments than we have here. The rear foundation for the proposed addition is only five (5) feet away from the septic drain field. Parsons recommended that granting the variance would not go against the Ordinance nor would it have a negative impact on adjacent property owners.

Tim Boyko asked if the alternative of moving the drainfield and building the addition over the old drainfield wasn't available?

Fred Parsons stated that you could not, by building/health code, construct anything over an old drainfield. Clerk Knepp stated that the Board of Appeals couldn't require an applicant to move a drainfield or well as it would cause a hardship on the property owner by doing so. Mr. Pyke explained that when they put a new drainfield in, around 1986, he had given instructions that the drainfield was to be put as far back on the property as possible in case they ever wanted to put an addition on the cottage. The drainfield was laid out by Larry Levensgood, County Health Department, and situate where the Health Department determined it had to go.

In reviewing the site plan it was determined that a seven (7) foot variance wasn't needed and that only a three foot two inch (3'2") variance was needed. The Clerk explained that when she saw the site plan she assumed the seven (7) foot notation was indicated to be into the side yard setback area. In reality the notation was the distance the addition would protrude from the existing structure. The application was amended to be a request for a four (4) foot variance request.

Robert Alexander asked the applicants if they were aware of the setback requirements and property lines when they purchased the property (in 74-75)? Mr. Pyke responded that they hadn't even thought about them. Clerk Knepp explained that Township Zoning started in 1974, however it went back to County Zoning for a couple of years and then a Township Zoning Board was created in 1976. Douglas Kuebler stated that there was very little setback requirements when Township Zoning started so people weren't aware of any setbacks.

Robert Alexander questioned whether the Zoning Board of Appeals shouldn't require the applicant to obtain a variance from lot area regulations in Section 4.13B and Lot Width Requirements in Section 4.13C because the Ordinance states, in part "no building or structure shall hereafter be erected, altered or enlarged unless the following yards and lot area requirements are provided and maintained in connection with such building, erection, alteration or enlargement". He stated by doing so, in his opinion, that would make any property owner aware that they would need a variance in order to construct a garage or accessory building.

Timothy Boyko stated that if the variance is granted there would remain approximately twelve (12) feet of setback area on the property, leaving room for emergency vehicle access, so there would be no health and safety issue, it won't infringe or impact neighboring property, it wouldn't violate the Zoning Ordinance, and this property is a nonconforming lot (lot of record) and therefore a variance to lot size and width shall be added to this application so he offered the following motion:

Granting the variance will not be contrary to the public

interest or to the spirit and intent of the Zoning Ordinance, Shall not permit the establishment within a zoning district of any use which is not permitted by right within that district, will not cause any adverse effect to property in the vicinity or in the zoning district or the township, relates only to property that is under control of the applicant, and 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. Based on these facts Timothy Boyko moves to grant the variance as requested. Joseph Rivard seconded the motion.

Roll call vote. Ayes: Robert Alexander, Joseph Rivard, Douglas Kuebler, and Timothy Boyko. Nays: None. Motion carried.

Meeting adjourned 8:00 p.m..

Respectfully Submitted,

A handwritten signature in cursive script that reads "Ethel R Knepp".

Ethel R. Knepp, Clerk