

2 hearings w/ these minutes

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
APRIL 14, 1999

The Zoning Board of Appeals hearing was called to order at 7:30 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, Dorman Robinson, Doris Robinson, and Andre Poineau.

Chair Roger Stoppel dispensed with the reading of the minutes of the last ZBA meeting and the minutes were approved as presented without objection.

The purpose of the first hearing was to hear a request by Gregory Packer for a 6 foot variance from the Hayes Township Zoning Ordinance Section 5.13 which requires all new construction to be located on land that is at an elevation of at least 590 feet above sea level. The applicant owns a cabin that is at an elevation of 585 feet and he desires to add an addition, two decks, and a second floor. The property is in the R-1 zone, located on Lake Charlevoix off of the Boyne city Road with the tax number 15-007-003-010-20.

Andre Poineau, representing the applicant, explained that this parent parcel currently has three residences which is not in compliance with the R-1 zone. The applicant will apply for a lot split which will leave one lot with 570 feet of lake frontage. This new lot will have the one existing cabin that is at the elevation of 584 feet and there is no place on this lot that is above the elevation of 584 feet.

Andre explained that the owner's plan is to expand this cabin and add a second floor and use it for 5 years and then he will remove this cabin and build a house. The cabin is set back more than 100 feet from the Lake and there are wetlands on this lot. Andre stated that some other Townships and Municipalities in the area have a minimum elevation of 584 feet so a variance would not be needed to expand a cabin like this. Andre estimated that this cabin was built in the 1960's before zoning was enacted. Andre stated that this is a unique parcel in Hayes Township because it has a plateau between the wetlands and the Lake.

Roger Stoppel made it clear that any decision made tonight applies only to the construction shown on the site plan and does not establish the criteria that any subsequent construction will be required to follow.

Andre responded to a question by stating that the height of the building will be under the required 25 feet and the upper story would be considered a half story because the sidewalls will only be 4 feet high.

Marlene Golovich asked if there was place on this lot where a building could be built at the elevation of 590 feet. Andre responded that the highest point of the lot is 584 feet.

Roger Stoppel stated that he has no problem with the Variance request because the cabin is existing.

FRED PARSONS MADE A MOTION TO GRANT THE 6 FOOT VARIANCE FROM THE MINIMUM ELEVATION REQUIREMENT IN SECTION 5.13 OF THE HAYES TOWNSHIP ZONING ORDINANCE AS REQUESTED BECAUSE THE NATURAL CHARACTERISTICS OF THE LOT INHIBIT THE LAWFUL LOCATION OF A STRUCTURE. THE VARIANCE WILL NOT BE CONTRARY TO THE INTENT AND PURPOSE OF THE ZONING ORDINANCE. THE VARIANCE WILL NOT CAUSE A SUBSTANTIALLY ADVERSE EFFECT UPON ADJACENT PROPERTIES. THE VARIANCE RELATES ONLY TO THE PROPERTY UNDER CONTROL OF THE APPELLANT. THE VARIANCE WILL NOT ESSENTIALLY ALTER THE CHARACTER OF THE SURROUNDING AREA. THE VARIANCE WILL NOT INCREASE THE HAZARD FROM FIRE, FLOOD, OR SIMILAR DANGERS AND THE VARIANCE WILL NOT INCREASE TRAFFIC CONGESTION. MOTION SECONDED BY NANCY NASH.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: Gregory Packer

Hearing Date 4-20-99

The property of Gregory Packer identified by the tax number 15-007-003-010-20.

Hereinafter referred to as the "property".

Application seeks a 6 foot variance from section 5.13 of the Zoning Ordinance. Applicant needs the variance to enlarge an existing cabin that is at the elevation of 584 feet above sea level. The cabin was built before Township Zoning and does not meet the minimum elevation requirement of 590 feet above sea level.

The Board having considered the Application, a public hearing having been held on 4-20-99, after giving due notice as required by law, the Board having heard the statements of a representative of the Applicant, the Board having considered 3 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-1 under the Zoning Ordinance.
2. The Board finds that under section 5.13 of the zoning ordinance a variance is needed.
3. The Board finds that the Applicant desires a 6 foot variance from the minimum elevation requirement to allow an existing cabin to be expanded.

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 natural characteristics of this site prevent the applicant from building at elevation 590 feet because no part of this lot is above elevation 584 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 the existing cabin was built on the highest ground available on this lot and it is located between wetlands and Lake Charlevoix.

3. The practical difficult 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 existing cabin is at elevation 584 feet and was built prior to Township zoning.

b. The Board finds that the hardship is not self created and that the current owner did not build the cabin.

4. The appellant presents information showing that the requested variance Will not be contrary to the intent and purpose of the zoning ordinance.

a. The board finds that the cabin is built on the highest ground available on this lot.

Will not cause a substantially adverse effect upon adjacent properties.

a. The board finds that this cabin has existed for over 25 years and an expansion will not effect adjacent properties.

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

a. The board finds this to be true.

Will not essentially alter the character of the surrounding area.

a. The board finds that the character of the area will not be altered because there are other lake front homes in this area and no trees will be removed to expand this cabin.

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

a. The Board finds this to be true.

Will not increase traffic congestion.

a. The board finds that traffic will not increase because this is only an expansion of a single family residence.

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 expansion of the existing cabin is reasonable and a permitted activity.

UPON MOTION MADE BY FRED PARSONS TO APPROVE THE FINDINGS OF FACT AND GRANT A 6 FOOT VARIANCE, SECONDED BY NANCY NASH, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE GRANTED.

ROLL CALL VOTE:

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

The purpose of the next hearing was to hear a request by Dorman and Doris Robinson for a variance from Section 4.13B which requires all new lots in the RR-1 zone to be a minimum of 5 acres. The Robinson's want to slit their 8.7 acre lot into two lots of 5 acres and 3.7 acres. The property is located at 07978 Pincherry Road on the corner of Pincherry and Church Road with the id number 15-007-125-004-25.

Doris Robinson explained that they have a buyer for the 3.7 acre parcel who wants to build a house at this location so she will be next to her recently widowed Mother. Doris also explained that her husband recently retired and they could use the money from the sale of this property which they do not use.

Doris responded to a question by stating that a small 1.3 acre lot was split off of the original 10 acre piece 25 years ago leaving 8.7 acres with the Robinson house.

Nancy Nash stated that the Planning Commission is allowing people to rezone from A-1 to RR-1 which could nearly double the density of the majority of the Township from one house on ten acres to one house on five acres. The Robinson's recently rezoned their property from A-1 to RR-1 and they were told by some of the members of the Planning Commission that a lot split may not be allowed. Nancy stated that allowing variances for lots less than 5 acres in RR-1 would be a dangerous precedent because other property owners will want variances and the density of the Township could increase even more. Nancy also stated that many Township residents are opposed to reducing the minimum lot size from 10 acres to 5 acres so the ZBA should not grant variances that result in lots of less than 5 acres.

Nancy Nash continued by stating that this situation is self created by the Robinsons because they split off 1.3 acres 25 years ago which now prevents them from being able to create two 5 acres lots.

Nancy Nash suggested that the 3.7 acres could be sold to the owner of the 1.3 acre lot if she combined it to make a 5 acre lot.

Ethel Knepp agreed that the combination could be done but it would not give Mrs. Radle (the owner of the 1.3 acre lot) the permission to build another house because she would be limited to one house on less than 10 acres.

Fred Parsons agreed that the situation is self created.

Doris Robinson stated that the buyer wants a separate house near her Mother so modifying the existing house would not be desired.

Marlene Golovich stated that an alternative to the variance exist because the Robinson's could sell the 3.7 acres to Mrs. Radle.

Nancy Nash stated that the Township should avoid allowing more residential lots of less than 5 acres to be created until the Township determines where an appropriate location would be and she also stated that this location probably will stay at the lower density of at least five acre lots. Nancy also reminded the Board that this increase in density for this area is not called for in the current Comprehensive Plan or the proposed Master Plan update.

Roger Stoppel explained that the two existing houses on what was originally 10 acres is the desired density for RR-1 and the Planning Commission would likely oppose allowing one more house.

NANCY NASH MADE A MOTION TO DENY THE VARIANCE REQUEST FOR DORIS AND DORMAN ROBINSON BECAUSE ONE OF THE NEW LOTS WOULD BE LESS THAN 5 ACRES AND BECAUSE THE HARDSHIP IS SELF-IMPOSED. FRED PARSONS SECONDED THE MOTION.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: Dorman and Doris Robinson

Hearing Date 4-20-99

The property of Dorman and Doris Robinson identified by the tax number 15-007-125-004-25.

hereinafter referred to as the "property".

Application seeks a 1.3 acre variance from section 4.13B of the Zoning Ordinance which requires all new lots in the RR-1 zone to be at least 5 acres. The applicants need the variance to split their 8.7 acre property into one parcel of 5 acres and one parcel of 3.7 acres.

The Board having considered the Application, a public hearing having been held on 4-20-99, after giving due notice as required by law, the Board having heard the statements of the applicants, the Board having considered 2 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 RR-1 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 1.3 acre variance from the minimum lot size of five acres.

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 dimensional zoning requirements could be met.

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 practical difficulty exist because the applicants no longer owns 10 acres which is the minimum required to be able to create two conforming lots in the RR-1 zone.

3. The practical difficult 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 practical difficulty was self created when these applicants split 1.3 acres off of their 10 acre lot 25 years ago before Township zoning was in effect.

4. The appellant presents information showing that the requested variance Will not be contrary to the intent and purpose of the zoning ordinance.

a. The board finds a new lot of less than 5 acres in this area may lead to higher density than desired by the zoning ordinance.

b. The Board finds that allowing this variance would set a precedent and other property owners will want to create lots in the RR-1 zone of less than 5 acres.

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

a. The board finds that a density higher than one house on five acres could have an adverse effect upon adjacent properties.

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

a. The board finds that other property owners in this area may want lots of less than 5 acres.

Will not essentially alter the character of the surrounding area.

a. The board finds that the Planning Commission is not likely to recommend this area for residential lots of less than 5 acres because that would alter the character of the surrounding area.

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

a. The Board finds this to be true.

Will not increase traffic congestion.

a. The board did not discuss the effect on traffic.

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 property owners already have reasonable use of their land.

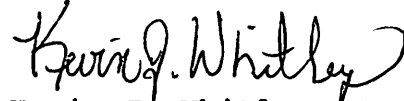
UPON MOTION MADE BY NANCY NASH TO APPROVE THE FINDINGS OF FACT AND DENY A 1.3 ACRE VARIANCE, SECONDED BY FRED PARSONS, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE DENIED.

ROLL CALL VOTE:

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

ROGER STOPPEL ADJOURNED THE MEETING AT 8:05 P.M.

Respectfully Submitted



Kevin J. Whitley, Secretary