

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECEMBER 1, 1999

Chair Roger Stoppel has resigned from the ZBA since the last meeting. BOB ALEXANDER MADE A MOTION TO APPOINT FRED PARSONS AS ACTING CHAIRMAN OF THIS HEARING. JONI HOSLER SECONDED THE MOTION. MOTION APPROVED UNANIMOUSLY.

The Zoning Board of Appeals hearing was called to order at 7:30 P.M. by acting chair Fred Parsons at the Hayes Township Hall, 09195 Old 31, Charlevoix.

ZBA members present were Craig Golovich, Fred Parsons, Joni Hosler, Bob Alexander, and Steve Wilson.

Also present were Kevin J. Whitley, Ethel Knepp, Ron Way, Jim McMahon, and Diane McMahon.

Jim McMahon presented his proposal to enlarge their home on Nine Mile Point drive that they purchased 25 years ago. The home has been a part time residence and now they are planning to retire and live here full time and they will need more room. The existing house is 1200 square feet and that will increase to 4000 square feet once the new construction is done. Jim acknowledged that the increase is substantial.

Jim McMahon explained that the lots in this subdivision are all small lots created before the zoning ordinance was enacted. Jim guessed that all of the lots in the neighborhood range from 55 to 85 feet wide which means that the lots do not meet the current minimum lot size for the R-2 zone.

Jim described his lot as being 70 feet wide at the road with an average width of 68 feet.

Jim explained the circumstances involving his first variance request: Part of the new building will encroach into the required 100 foot setback from Lake Michigan. The base building will be 4 feet into the setback and a cantilever second floor with eaves and window openings will require a variance of 8.5 feet. Jim explained that the building will be mostly behind a line running from the next home to the East to the next home to the West. No part of the new construction will extend past the existing deck.

Jim McMahon described the request for the second variance: They are proposing to add a fourteen foot addition on the West side. To do this, they will need a 6.5 foot variance to create a 8.5 foot setback

HAYES TOWNSHIP ZBA HEARING 12-1-99

The third variance will require a 2.3 foot variance on the East side to construct a garage and leave a 12.7 foot setback. Jim explained that the small part of this parcel not used for setbacks or buildings would be used for the drain field.

The fourth variance will be needed to increase the height of the house. The new house will have several different peaks. The mean height of the tallest peak will be 3.3 feet above the maximum allowed 25 feet.

The last variance request will be a 14 foot variance from the side yard setback to allow an existing shed to be moved into a position 1 foot from the West property line.

Fred Parsons asked if the shed could be located on the property somewhere else so the large variance would not be needed.

Jim McMahon explained that he has several reasons for putting the shed in this location including saving existing trees, staying off of the drain field, leaving the formal entrance open, and staying out of the front yard setback. Jim was willing to change the orientation of the shed, which would add another foot to the setback.

Bob Alexander stated that a one foot side yard setback does not leave enough access between the properties..

There was much discussion regarding the location of the shed and the impact it would have in other locations.

No one present spoke in favor or opposed to these variances.

One letter was received from adjacent neighbors, Jan and David Kemme and the entire letter was entered into the record. The Kemme's wrote in part:" My wife and I have discussed several of their requests with them (the McMahons). We have also discussed these with several real estate and legal experts. We have found no expert that would agree that these changes would not have an impact on our property. As a result, at this time and given the plan that we examined, we defer to the collective wisdom of the Zoning appeals Board and also simply await its decision on items 1 through 4 of you letter. However, we do not agree to the request number 5. Although the shed has been in violation of the set back requirements we would like the new location to be in compliance..The proposed location seems even more intrusive. The fact that it is now in a position that violates the setback should not be taken as an indication that we agreed to its current location, only that we were trying to be reasonable in allowing for its eventual relocation. We feel that an alternative location, fully complying with the setback requirements, must be found..."

HAYES TOWNSHIP ZBA HEARING 12-1-99

Bob Alexander reminded the Board that variances should be minimized when possible and he wondered why the garage could not be reduced to increase the East side yard setback.

Jim McMahon explained that he needed all of the storage space for this full time residence and he needs to maneuver cars around the drain field and into the garage.

Fred Parsons reminded the Board that an R-2 lot requires a minimum of 32,600 square feet and this lot, which was platted before zoning, only has 13,300 feet which creates the need for variances.

Steve Wilson agreed with Fred's point and stated that the 6.5 foot West side yard variance is reasonable.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Applicant: James and Diane McMahon

Hearing Date 12-1-99

The property identified by the tax number 15-007-400-007-00.

Hereinafter referred to as the "property".

1. Applicant seeks an 8.5 foot variance from section 5.13A(1) of the Zoning Ordinance. Applicant needs the variance to enlarge an existing home into the lakefront setback.
2. Applicant seeks a 6.5 foot variance from Section 4.13B of the Zoning Ordinance. Applicant needs the variance to enlarge an existing home into the West side yard setback.
3. Applicant seeks a 2.3 foot variance from Section 4.13B of the Zoning Ordinance. Applicant needs the variance to enlarge an existing home into the East side yard setback.
4. Applicant seeks a variance from Section 2.02 "building height". Applicant needs the variance to enlarge an existing home and construct a new roof with a median height 3.3 feet higher than allowed.
5. Applicant seeks a 14 foot variance from Section 4.13B of the Zoning Ordinance. Applicant needs the variance to relocate an existing shed into the West side yard setback.

HAYES TOWNSHIP ZBA HEARING 12-1-99

The Board having considered the application, a public hearing having been held on 12-1-99, after giving due notice as required by law, the Board having heard the statements of the Applicants, the Board having heard from the designer representing the applicants, the Board having heard from the Hayes Township Zoning Administrator, the Board having read one letter received from neighbors, the Board having considered the following exhibits:

1. A Hayes Township Zoning application and permit with a receiving date of 10-26-99;
2. A public notice from Ethel R. Knepp, Township Clerk;
3. A letter from Ethel Knepp addressed to all property owners within 300 feet of the property dated 11-4-99;
4. An affidavit of mailing from Ethel Knepp to the ZBA dated 11-4-99;
5. A report from Zoning Administrator Ethel Knepp to the ZBA;
6. A letter from Jim and Diane McMahon to Ethel Knepp dated 10-25-99;
7. A four page document titled: "Dimensional Zoning Requirements" from the applicant;
8. A document titled: "Michigan Shores Hayes Township variances previously granted" from the applicant;
9. A document titled: "Michigan Shores possible Hayes Township roof eaves exceptions" from the applicant;
10. A Northwest Michigan Community Health Agency permit dated 10-07-99;
11. A Charlevoix Conservation District permit dated 10-11-99;
12. A letter from David and Jan Kemme dated 11-26-99;
13. A site Plan updated on 10-20-99 by the applicant;
14. Seven pages of floor plans and elevation drawing number A-1 through A-7 dated 10-25-99;

and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

The Board finds that the property is currently zoned R-2 under the Zoning Ordinance.

The Board finds that the property is bordered on the North by Lake Michigan and the South by Nine Mile Point Drive.

1. The Board finds that under Section 5.13 A(1) of the zoning ordinance a 100 foot setback is required from Lake Michigan. The Board also finds that the home was constructed in 1974 when the Zoning Ordinance required a 50 feet setback from Lake Michigan.

HAYES TOWNSHIP ZBA HEARING 12-1-99

2. The Board finds that the sewage disposal system is located to the rear, or road side, of the residence.
3. The Board finds that under Section 4.13 B of the zoning ordinance a 15 foot setback is required from all side lot lines.
4. The Board finds that building height is defined as being measured from the median height between the eaves and the peak or any other portion of the building, whichever is highest, except chimneys. The maximum height of a building or structure within 500 Feet from a lake or stream shall be 25 Feet.
5. The Board finds that the existing structures on Lots 6 (West) and 8 (East) meet the setbacks as required by Section 4.13 B of the Zoning Ordinance.

FINDINGS UNDER SECTION 7.05 C OF THE ZONING ORDINANCE

The Board makes the following findings as required by Section 7.05 C. of the Zoning Ordinance for each of the following specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations. Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board has the power to grant dimensional variances. An affirmative finding on all standards is necessary to grant a variance.

8.5 foot variance from Section 5.13A1

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 a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure.

- a. Michigan Shores Subdivision is a pre-existing subdivision created in 1968 (prior to township zoning).
- b. Properties in Michigan Shores are zoned R-2, which requires 3/4 acre lot sizes and 120 feet width.
- c. The required placement of the septic system to the rear, or roadside, of the residence limits the ability to construct the addition to that end of the home.
- d. The new construction does not extend beyond the existing deck.

HAYES TOWNSHIP ZBA HEARING 12-1-99

e. Lot 7 in Michigan Shores is an average 68 feet wide.

Affirmative findings

2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.

a. The shallowness of the lots in Michigan Shores is unique from other lakefront lots in Hayes Township, that are zoned residential, which creates a practical difficulty.

Affirmative findings.

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 is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a variance.

a. The existing home was built prior to the effective date of the Hayes Township Zoning Ordinance.

b. The existing home and attached front deck, when constructed, met the previous 50 feet lake shore setback requirement.

c. The practical difficulty was not created by an action of the applicant or a predecessor. Therefore this variance request is not a self created hardship.

Affirmative findings

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

a. Will not be contrary to the intent and purpose of the zoning ordinance as the addition will not encroach on the lakefront setback because it does not extend beyond the existing deck.

b. Will not cause a substantially adverse effect upon adjacent properties because it does not have any effect upon the adjacent properties.

c. Will relate only to the property under control of the appellant as the additions are solely related to the property owned by the applicant.

HAYES TOWNSHIP ZBA HEARING 12-1-99

d. Will not essentially alter the character of the surrounding area because the single family residential use will continue which is consistent with the zone district it is located within.

e. Will not increase the hazard from fire, flood, or similar dangers because it will not extend any further than the existing structure.

f. Will not increase traffic congestion because of the residential nature traffic patterns will be consistent with that use.

Affirmative findings

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 property owners will occupy the remodeled home as a full-time, primary residence, as opposed to a vacation home, which is consistent with the lifestyle and building functionality that the other residents enjoy. Therefore it is the minimum variance necessary to permit reasonable use of the premises for activities permitted in the R-2 zone district.

Affirmative findings.

FRED PARSONS MADE A MOTION TO APPROVE AN 8.5 FOOT VARIANCE FROM THE REQUIRED SETBACK FROM LAKE MICHIGAN FOR THE PARCEL WITH THE ID NUMBER 15-07-400-007-00. MOTION SECONDED BY STEVE WILSON. MOTION APPROVED UNANIMOUSLY.

PROPOSED FINDINGS UNDER SECTION 7.05 C OF THE ZONING ORDINANCE

The Board makes the following findings as required by Section 7.05 C. of the zoning ordinance for each of the following specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations. Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board has the power to grant dimensional variances. An affirmative finding on all standards is necessary to grant a variance.

6.5 foot variance from Section 4.13B, West side yard

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 a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure.

a. Michigan Shores Subdivision is a pre-existing subdivision created in 1968 (prior to Township zoning).

b. Properties in Michigan Shores are zoned R-2, which requires 3/4 acre lot sizes and 120 feet width.

c. Lot 7 in Michigan Shores is an average 68 feet wide.

Affirmative findings

2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.

a. The shallowness and narrowness of the lots in Michigan Shores are unique from other lots in Hayes Township that are zoned residential, which creates a practical difficulty.

Affirmative findings

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 is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a variance.

a. The existing home was built prior to the effective date of the Hayes Township Zoning Ordinance.

b. The existing home, when constructed, met the zoning regulations put into effect on July 1, 1974.

c. The practical difficulty was not created by an action of the applicant or a predecessor. Therefore this variance request is not a self created hardship.

Affirmative findings

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

- a. Will not be contrary to the intent and purpose of the zoning ordinance as the intent and purpose of the zoning ordinance is to secure the health, safety, and welfare of the public. The proposed building plans comply with the County Health Department and the Conservation District. This addition allows for room for emergency vehicle access.
- b. Will not cause a substantially adverse effect upon adjacent properties as it will enhance the value of adjacent properties and the neighborhood and the exterior home appearance will be updated and improved.
- c. Will relate only to the property under control of the appellant as the additions are solely related to the property owned by the applicant.
- d. Will not essentially alter the character of the surrounding area because the single family residential use will continue which is consistent with the zone district it is located within.
- e. Will not increase the hazard from fire, flood, or similar dangers because it will provide adequate access for emergency personnel and vehicles, water run-off to adjacent homes is maintained with the remodeled home.
- f. Will not increase traffic congestion because of the residential nature traffic patterns will be consistent with that use.

Affirmative findings

- 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 property owners will occupy the remodeled home as a full-time, primary residence, as opposed to a vacation home, which is consistent with the lifestyle and building functionality that the other residents enjoy. Therefore it is the minimum variance necessary to permit reasonable use of the premises for activities permitted in the R-2 zone district.

Affirmative findings

CRAIG GOLOVICH MADE A MOTION TO APPROVE A 6.5 FOOT VARIANCE FROM SECTION 4.13B FOR THE WEST SIDE YARD TO ALLOW EXPANSION OF AN EXISTING HOME INTO THE SIDE YARD SETBACK FOR THE PARCEL WITH THE ID NUMBER 15-07-400-007-00. FRED PARSONS SECONDED THE MOTION. MOTION APPROVED UNANIMOUSLY.

PROPOSED FINDINGS UNDER SECTION 7.05 C OF THE ZONING ORDINANCE

The Board makes the following findings as required by Section 7.05 C. of the Zoning Ordinance for each of the following specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations. Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board has the power to grant dimensional variances. An affirmative finding on all standards is necessary to grant a variance.

2.3 Foot variance from Section 4.13B, East side yard setback.

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 a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure.

a. Michigan Shores subdivision is a pre-existing subdivision created in 1968 (prior to Township zoning).

b. Properties in Michigan Shores are zoned R-2, which requires 3/4 acre lot sizes and 120 feet width.

c. Lot 7 in Michigan Shores is an average 68 feet wide.

Affirmative findings

2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.

a. The shallowness and narrowness of the lots in Michigan Shores is unique from other lots in Hayes Township, that are zoned residential, which creates a practical difficulty.

Affirmative findings

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 is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a variance.

a. The existing home was built prior to the effective date of the Hayes Township Zoning Ordinance.

b. The existing home, when constructed, met the zoning regulations put into effect on July 1, 1974.

c. The practical difficulty was not created by an action of the applicant or a predecessor. Therefore this variance request is not a self created hardship.

Affirmative findings

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

a. Will not be contrary to the intent and purpose of the zoning ordinance as the intent and purpose of the Zoning Ordinance is to secure the health, safety, and welfare of the public. The proposed building plans comply with the County Health Department and the Conservation District. This addition allows for room for emergency vehicle access.

b. Will not cause a substantially adverse effect upon adjacent properties as it will enhance the value of adjacent properties and the neighborhood and the exterior home appearance will be updated and improved.

c. Will relate only to the property under control of the appellant as the additions are solely related to the property owned by the applicant.

d. Will not essentially alter the character of the surrounding area because the single family residential use will continue which is consistent with the zone district it is located within.

e. Will not increase the hazard from fire, flood, or similar dangers because it will provide adequate access for emergency personnel and vehicles, water run-off to adjacent homes is maintained with the remodeled home.

f. Will not increase traffic congestion because of the residential nature traffic patterns will be consistent with that use.

Affirmative findings

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 property owners will occupy the remodeled home as a full-time, primary residence, as opposed to a vacation home, which is consistent with the lifestyle and building functionality that the other residents enjoy. Therefore it is the minimum variance necessary to permit reasonable use of the premises for activities permitted in the R-2 zone district.

Affirmative findings

BOB ALEXANDER MADE A MOTION TO APPROVE A 2.3 FOOT VARIANCE TO ALLOW THE EXPANSION OF AN EXISTING HOME INTO THE EAST SIDE YARD SETBACK ON PARCEL WITH THE ID NUMBER 15-07-400-007-00. MOTION SECONDED BY FRED PARSONS. MOTION APPROVED UNANIMOUSLY.

PROPOSED FINDINGS UNDER SECTION 7.05 C OF THE ZONING ORDINANCE

The Board makes the following findings as required by Section 7.05 C. of the Zoning Ordinance for each of the following specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations. Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the Board has the power to grant dimensional variances. An affirmative finding on all standards is necessary to grant a variance.

3.3 Foot median roof height variance

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 a Wetland, Flood Plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure.

a. Michigan Shores Subdivision is a pre-existing subdivision created in 1968 (prior to township zoning).

b. Properties in Michigan Shores are zoned R-2, which originally allowed for a residence to be 35 feet tall in all zone districts.

c. Deviation from the median height requirement is being requested so that the architectural roof line slope remains consistent with the existing home roof line slope which is a 12-12 pitch.

Affirmative findings

2. The problem creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone.

a. The average mean height of the roof will be 27.3 Feet (25 Feet is the standard required in the ordinance).

b. The practical difficulty which is unique is to maintain the existing roof line slope, which is not shared by neighboring properties.

Affirmative findings

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 is requested, or is necessary as the result of governmental action. A self created hardship is not a valid basis for a variance.

a. The existing home was built prior to the effective date of the Hayes Township Zoning Ordinance.

b. The existing home, when constructed, met the zoning regulations put into effect on July 1, 1974.

c. The practical difficulty was not created by an action of the applicant or a predecessor. Therefore this variance request is not a self created hardship.

Affirmative findings

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

- a. Will not be contrary to the intent and purpose of the zoning ordinance as maintaining the existing roof line slope will relate to the intent and purpose of the zoning ordinance.
- b. Will not cause a substantially adverse effect upon adjacent properties as it will enhance the value of adjacent properties and the neighborhood and the exterior home appearance will be updated and improved.
- c. Will relate only to the property under control of the appellant as the additions are solely related to the property owned by the applicant.
- d. Will not essentially alter the character of the surrounding area because the single family residential use will continue which is consistent with the zone district it is located within.
- e. Will not increase the hazard from fire, flood, or similar dangers.
- f. Will not increase traffic congestion because of the residential nature traffic patterns will be consistent with that use.

Affirmative findings

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 property owners will occupy the remodeled home as a full-time, primary residence, as opposed to a vacation home, which is consistent with the lifestyle and building functionality that the other residents enjoy. Therefore it is the minimum variance necessary to permit reasonable use of the premises for activities permitted in the R-2 zone district.

Affirmative findings

FRED PARSONS MADE A MOTION TO APPROVE A VARIANCE FROM SECTION 2.02 MEDIAN BUILDING HEIGHT TO ALLOW THE EXPANSION OF AN EXISTING HOME AND INCREASE THE MEDIAN ROOF HEIGHT TO 3.3 FEET HIGHER THAN ALLOWED ON A PARCEL WITH THE ID NUMBER 15-07-400-007-00. MOTION SECONDED BY JONI HOSLER. MOTION APPROVED UNANIMOUSLY.

The next request was a 14 foot West side yard setback variance to allow an existing shed to be move into a position 1 foot from the property line.

Jim McMahon explained that he needs the storage space and the shed location is limited because of the drain field, existing trees, and the formal entrance into the house. Jim stated that he would be willing to rotate the shed some which may increase the setback to two feet.

There was much discussion between the ZBA members to determine if the applicant had an alternative location for this shed that would not require such a large variance.

BOB ALEXANDER MADE A MOTION TO DENY THE 14 FOOT WEST SIDE YARD VARIANCE REQUEST FOR THE SHED LOCATION BECAUSE IT WOULD BE CONTRARY TO THE ZONING ORDINANCE TO GRANT SUCH AN EXTREME VARIANCE FOR AN OUTBUILDING. CRAIG GOLOVICH SECONDED THE MOTION. MOTION TO DENY APPROVED UNANIMOUSLY.

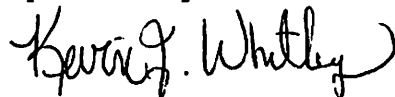
MOTION MADE BY FRED PARSONS TO NONMINATE JONI HOSLER AS THE NEW CHAIR OF THE HAYES TOWNSHIP ZONING BOARD OF APPEALS. MOTION SECONDED BY STEVE WILSON. JONI HOSLER WAS ELECTED CHAIR UNANIMOUSLY.

MOTION MADE BY FRED PARSONS TO NOMINATE PAUL RICHARDS AS VICE-CHAIR OF THE HAYES TOWNSHIP ZONING BOARD OF APPEALS. MOTION SECONDED BY STEVE WILSON. PAUL RICHARD WAS ELECTED UNANIMOUSLY.

FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF THE 6-16-99 ZBA HEARING FOR THE BAY SHORE FOOD MARKET AS PRESENTED. JONI HOSLER SECONDED THE MOTION. BOB ALEXANDER ABSTAINED FROM VOTING AND THE REMAINING MEMBERS APPROVED THE MINUTES UNANIMOUSLY.

BOB ALEXANDER MADE A MOTION TO ADJOURN THIS HEARING AT 9:18 P.M. MOTION SECONDED BY JONI HOSLER. HEARING ADJOURNED.

Respectfully Submitted,


Kevin J. Whitley