

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
January 28, 1998

The Zoning Board of Appeals hearing was called to order at 7:30 P.M. by Chair Bob Alexander at the Hayes Township Hall, 09195 Old 31, Charlevoix. ZBA members present were Marlene Golovich, Bob Alexander, Fred Parsons and Steve Wilson.

Also present were Kevin J. Whitley, Ethel Knepp, John Ferguson, Tim Boyko, Ed Amick, Carol Amick, Ed Schroeder, and Ray Wallick.

The purpose of the first hearing is to hear a request by Edward and Pam Schroeder for a variance of 4 feet from section 4.13B (sideyard setback). A new survey has discovered that an existing garage is 11.2 feet from the side lot line instead of the required 15 feet. The property tax number is 15-007-004-001-70 located at 09038 Boyne City Road.

Ethel Knepp explained that a zoning permit was issued on 12-13-89 by a previous zoning administrator based on a site plan that shows the garage setback 18 feet from the line.

Ed Schroeder explained that the builder, Ray Wallick, built the garage after eye sighting the property line between stakes. Ed also stated that a new survey has located the true property line and it is only 11 feet from the corner of the garage.

Bob Alexander reminded the Board that one zoning guideline discourages granting variances based on a situation caused by an action of the applicant.

Ray Wallick, the builder, stated that the terrain of this lot and the slope made it very difficult to find the property line. Ray also stated that they planned the garage to be 18 feet from the line to leave a margin of 3 feet over the requirement in case of an error in finding the line.

Ed Amick spoke in favor of this variance stating that the lot was a large acreage parcel not a small residential lot, it is completely wooded, and there are no other buildings close by on the adjacent acreage parcel.

Bob Alexander read aloud the one letter received regarding this variance request: Richard Joseph, attorney representing the Plagens who own the adjacent parcel, supports the variance approval.

Bob closed the public comment session.

Fred Parsons stated that he inspected the property and found it would be impossible to have the garage anywhere else. Fred concurred that the property line is hard to find. Fred stated that a 4 foot variance would not be contrary to the public interest or against the spirit of the Ordinance. Fred stated that this garage has been there for 8 years without complaints so it would not establish a precedent and it relates only to this parcel. Fred recommends against requiring this building to be moved and reminded the Board that the Township has collected taxes

for 8 years on this garage in its current location.

Bob Alexander asked if Fred would grant the same variance if the garage was not there. Fred responded yes.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Applicant: Edward Schroeder

Hearing Date 1-28-98

The property of Edward Schoeder identified by the tax number 15-007-004-001-70.

hereinafter referred to as the "property".

Application seeks a 4 foot variance from section 4.13B (sideyard setback) of the Zoning Ordinance. Applicant needs the variance because an existing garage is located 11 feet from the side lot line instead of the required 15 feet.

The Board having considered the Application, a public hearing having been held on 1-28-98, after giving due notice as required by law, the Board having heard the statements of the Applicant, the Applicant's builder, the Board having considered a letter submitted by the neighbor's attorney, the Board having considered comments by a member of the public, the Board having considered 4 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 4.13B of the zoning ordinance a variance is needed.
3. The Board finds that the Applicant desires a 4 feet variance from the sideyard setback requirement to allow an existing garage to be 11 feet from the property line.

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. Will not be contrary to the public interest or to the spirit and intent of this ordinance.

a. the Board finds that a 4 foot variance will not be contrary to the public interest or to the spirit and intent of the zoning Ordinance in that this structure has existed for more than 8 years without being advised of the violation.

2. Shall not permit the establishment within a zoning district of any use which is not permitted by right within that district.

a. The Board finds that granting a variance will not permit the establishment within a zoning district of any use which is not permitted by right in that district because the district is R-1, single family residential and that is how the property is being used.

3. Will not cause any adverse effect to property in the vicinity or in the zoning district or the Township.

a. The Board finds that a variance will not cause any adverse effect to property in the vicinity or in the district or the township in that no adverse effect has occurred in the last 8 years.

4. Relates only to property that is under control of the applicant.

a. The Board finds that the variance relates only to the property that is under control of the Schroeder's.

5. 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.

a. The Board finds that The property is subject to exceptional and extraordinary circumstances and conditions in that the applicant relied on a builder to obtain the appropriate permits and also relied on the Township to enforce the regulations of the zoning ordinance land use including the determination that the correct measurements were indicted on the application for a permit.

b. The Board finds that the Township has collected taxes on this garage in its present location for 8 years.

UPON MOTION MADE BY FRED PARSONS TO APPROVE THE FINDINGS OF FACT AND GRANT A 4 FOOT VARIANCE, SECONDED BY STEVE WILSON, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE GRANTED.

ROLL CALL VOTE:

MARLENE GOLOVICH	YES
STEVE WILSON	YES
FRED PARSONS	YES

The next part of the scheduled public hearing was canceled because the applicants', David and Debra Reed, have withdrawn their request for a variance and they will resolve their setback issue by moving the building.

The purpose of the next part of this public hearing is to hear a request by Louis Rauh for an extension of a variance that was granted by the ZBA on 2-26-97. The ZBA granted variances on 2-26-97 to allow Louis Rauh to combine 4 non-conforming lots and then divide the property into 2 new lots. The lots were not recorded at the Register of Deeds and Section 7.05D of the zoning Ordinance states that each variance granted shall be null and void unless utilized by the applicant within 6 months after granting the variance. One of the proposed new parcels was granted a variance from Section 4.13C (Lot size) because it was less than 2 acres and a variance from section 4.13B because it was less than 200 feet wide. The other proposed new parcel was granted a variance from section 4.13B because it was less than 200 feet wide. The applicant is requesting an extension of the variances so he can resister the new parcels.

In addition, the applicant now needs a variance from the Hayes Township Parcel Division Ordinance because this new ordinance prevents new parcels from having a length more than 4 times the width.

Fred Parsons stated that the property in this area has a long history of changes and negotiations that have resulted in the need for this variance. Fred also stated that the variance needed from the parcel division ordinance is not the fault of the applicant because the ordinance was approved after the applicant first applied for this split. Fred stated that these variances won't adversely effect the neighborhood and it relates only to this property.

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

Hearing Date: 1-28-98

The property of Louis Rauh now identified by the tax numbers 15-07-119-026-10, 15-07-119-026-15, 15-07-119-026-20, and 15-07-119-028-60. hereinafter referred to as the "property"

Applicant seeks extension of previous granted variances from section 4.13C (lot size) for a lot less than 2 acres and section 4.13B for two lots less than 200 feet wide.

Applicant also seeks a variance from the Hayes Township Parcel Division Ordinance for two lots that are more than 4 times longer than their width.

The Board having considered the Application, a public hearing having been held on 1-28-98, after giving due notice as required by law, the Board having heard the statements of the Applicant's surveyor, the Board having considered 5 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 4.13B and 4.13C the lot size requirements and the lot width requirements would not allow the applicant to create the 2 proposed parcels without a variance.
3. The Board finds that under the Parcel Division Ordinance Section 6(d) the length to width ratio requirement would not allow the 2 proposed parcels to be created without a variance.
4. The Board finds that the applicant desires a .359 acre variance to allow the creation of a lot that is 1.641 acres.
5. The Board finds that the applicant desires a 115 feet variance to create a lot that is 85 feet wide at the smallest width.
6. The Board finds that the applicant desires a 148 feet variance to create a parcel that is approximately 52 feet wide at the smallest width.
7. The Board finds that the applicant was granted the 3 variances from the zoning ordinance at a ZBA public hearing on 2-26-97.
8. The Board finds that the variances granted on 2-26-97 have become null and void because the parcels were not registered at the Register of Deed office before a 6 month period had passed.
9. The Board finds that Hayes Township adopted a new Parcel Division Ordinance that became effective on 11-21-97.
10. The Board finds that if the parcels would have been registered before 11-21-97, the variance from the Parcel Division Ordinance would not be needed.

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. Will not be contrary to the public interest or to the spirit and intent of this Ordinance.

a. The Board finds that the extension of previously granted variances would not be contrary to the public interest or to the spirit and intent of the Zoning Ordinance.

b. The Board finds that allowing the creation of these two lots would not be contrary to the public interest or the spirit and intent of the Parcel Division Ordinance because the lots were first proposed and approved by Hayes Township before the Parcel Division Ordinance was effective.

2. Shall not permit the establishment within a zoning district of any use which is not permitted by right within that district.

a. The Board finds that one of the proposed lots has a single family residence and garage which is an allowed use.

b. The Board finds that the other lot is vacant.

c. The Board finds that the variances requested would not permit a use which is not permitted by right.

3. Will not cause any adverse effect to property in the vicinity or in the zoning district or the Township.

a. The Board finds that an extension to the previously granted variances would not cause any adverse effect to the property in the vicinity or in the district or the Township.

b. The Board finds that the variance from the Parcel Division Ordinance would not cause any adverse effect to the property in the vicinity or the district or the Township because the lots were first proposed and approved by Hayes Township before the Parcel Division Ordinance was effective.

4. Relates only to property that is under control of the applicant.

c. The Board finds that all the variances relate on to the applicants property.

5. 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.

a. The Board finds that an extension of previously granted variances would affect only this property which is subject to extraordinary circumstances because the applicant is combining 4 parcels to make 2 parcels.

b. The Board finds that these lots were proposed and approved by Hayes Township before the Parcel Division Ordinance was effective and those are exceptional circumstances which have not resulted from any act of the applicant.

DECISION

UPON MOTION BY FRED PARSONS TO APPROVE THE FINDINGS OF FACT, APPROVE THE EXTENSION OF THE PREVIOUSLY GRANTED VARIANCES FROM THE ZONING ORDINANCE, AND APPROVE THE VARIANCE FROM THE PARCEL DIVISION ORDINANCE, SECONDED BY STEVE WILSON, AND PASSED, THE BOARD RULED THAT THE APPLICANT'S VARIANCE REQUEST BE GRANTED.

ROLL CALL VOTE

STEVE WILSON	YES
FRED PARSONS	YES
MARLENE GOLOVICH	YES

FRED PARSONS MADE A MOTION TO APPROVE THE MINUTES OF THE 9-10-97 ZBA HEARING AS PRESENTED. MOTION SECONDED BY MARLENE GOLOVICH. MINUTES APPROVED UNANIMOUSLY.

FRED PARSONS MADE A MOTION TO NOMINATE BOB ALEXANDER AS CHAIR AND ROGER STOPPEL AS VICE-CHAIR OF THE HAYES TOWNSHIP ZONING BOARD OF APPEALS. MOTION SECONDED BY STEVE WILSON. MOTION APPROVED UNANIMOUSLY.

ROLL CALL VOTE:

STEVE WILSON	YES
FRED PARSONS	YES
MARLENE GOLOVICH	YES
BOB ALEXANDER	NO

MOTION APPROVED

MOTION TO ADJOURN. MEETING ADJOURNED.

Respectfully Submitted

Kevin J. Whitley, Secretary