

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
HEARING

July 16, 1997

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

Zoning Board of Appeals members present were Joe Rivard, Fred Parsons, Roger Stoppel, and Marlene Golovich.

Also present were Ethel Knepp, Kevin J. Whitley, Frank Schultz, Dave Haywood, Tom Niswonger, Judy Niswonger, and Bryan Graham.

Chair Fred Parsons announced the purpose of the hearing which is to hear a request for a variance for a 1.2 acre parcel with tax number 15-007-310-022-00 located on Birdland Drive in the R-1 zone.

Township Attorney Bryan Graham reviewed the exhibit list for this request. There were 16 items on the list prior to today and Zoning Administrator Knepp presented five more letters to be added to the exhibit list. These letters include one dated 7-16-97 from Paul Stanford, one dated 7-15-97 from George Valentine, one dated 7-16-97 from Pat Chaps, and one dated 7-16-97 from Mary Margaret Evans.

Frank Schultz presented his proposal and explained that he is asking for two variances; both variances from section 5.13A Shoreline Protection Strip so he can build a house 50 feet back from Woods Creek that will have the elevation of the lowest part of the house at least 583 feet above sea level(IGLD).

Joe Rivard asked how long this parcel has been owned by Frank Schultz and how much cutting of vegetation from the shoreline protection strip has been done?

Frank responded that he has owned the parcel for about 7 years. During that time he has cut grass and shrubs under three feet. Frank stated that the land was timbered off prior to his ownership. Frank stated that the high water level of Lake Charlevoix has caused the greenbelt area to have water on it. Frank plans to plant trees along the Lake when the water recedes. Frank stated that he has planted 90 trees along Woods Creek earlier this year.

Joe Rivard asked if the land supported the weight of the equipment? Frank Schultz responded that the land supported the weight of his lawn tractor he used to brush hog the parcel.

Roger Stoppel asked if the DEQ issued a permit based on a plan dated 11-15-91 and he asked if we can presume that the DEQ will not allow any modifications.

Dave Haywood, lawyer for Mr. Schultz, stated that it would be erroneous to presume the DEQ will not allow any modifications to the 11-15-91 plan. Dave also stated that the permit is not open ended, but they may ask the DEQ to consider changes to the 11-15-91 plan. Dave explained that they

1 submitted the 11-15-91 plan to the DEQ based on what they believed the
2 DEQ would accept. They then brought that plan to the Township for
3 approval
4 and the Township asked for changes to the house design to make it more
5 aesthetically pleasing and that's why they made a new plan.

6 Roger Stoppel asked if they now have a second DEQ approval for the new
7 plan.

8 Dave Haywood responded that they have a letter from Brad Wilkins dated 6-
9 23-97 stating that the DEQ will accept changes to 11-15-91 plan. Dave
10 reminded the Commission that they did not solicit this letter and he also
11 stated that the approval has been elevated beyond Brad Wilkins so Brad is
12 not the decision maker.

13 Bryan Graham asked if Dave considered the 6-23-97 letter from Brad
14 Wilkins a indication that the DEQ may consider a longer driveway?

15 Dave Haywood responded that the letter is a indication that Brad will
16 accept changes to the house design and orientation on the lot. Dave also
17 noted that the letter states that Brad Wilkins will not accept a longer
18 driveway, but Dave had talked to Brad since the letter was written and
19 the DEQ may accept changes to the length of the driveway. Dave stated
20 that the new design resulted in about a 1000 square feet of less impact
21 on the property including the longer driveway.

22 Joe Rivard asked for an explanation of the less impact.

23 Frank Schultz explained that the new plan changes to a two story house
24 from a one story.

25 Dave Haywood stated that the new plan has a house with a smaller foot
26 print.

27

28 Roger Stoppel asked about the setback on the South side of the house?

29 Ethel Knepp explained that the side yard setback requirement is 15 feet
30 in R-1 and this plan shows a fifteen foot setback. Ethel explained that a
31 deed restriction for a different lot nearby requires a 20 foot side yard.
32 Ethel Knepp expressed hope that Frank would not cut any of the existing
33 trees on the South lot line.

34 Dave Haywood stated that the DEQ expressed a desire to have the house as
35 close to the South lot line as possible. Dave also stated that he
36 believes that this lot does not have a 20 foot side yard deed
37 restriction.

38 Ethel Knepp stated that the Township is not involved in deed
39 restrictions.

40 Joe Rivard pointed out that some neighbors letters state that this lot is
41 so wet that trees will not survive.

42 Frank Schultz stated that the property has 50 foot high cedar and spruce
43 trees. Frank expects the water will leave when the lake level goes down.
44 Frank stated that the 90 trees that he planted are still living.

1 Ethel Knepp explained that the shore line protection strip can be
2 anywhere between the house and the lake.

3 Joe Rivard asked if the new proposed house design is the same size as the
4 first house design.

5 Frank stated that the current plan has a house of 2600 square feet.

6 Roger Stoppel asked if the first plan was designed to maintain a 100 foot
7 setback from Woods Creek?

8 Frank Schultz recalled that a goal of the first plan was to stay back 100
9 feet from Lake Charlevoix.

10 Ethel Knepp recalled that the DEQ was ordered to issue a permit with some
11 conditions.

12 Dave Haywood explained that the DEQ staff decision was to deny this
13 permit and the final agency decision decided to grant the permit.

14 Bryan Graham explained that it was an internal review process and an
15 administrative law judge granted the permit.

16 Dave Haywood made the point that the administrative law judge is employed
17 by the DEQ so the DEQ made the decision to grant the permit not an
18 outside agency or person.

19 Joe Rivard asked for a description of Woods Creek.

20 Dave Haywood described the creek which is 5 to 7 feet wide, it varies in
21 depth from 2 inches to 2 feet, it is a cold water stream that supports
22 fish including steelhead.

23 Joe Rivard asked why there is a concern with the house being close to the
24 creek?

25 Ethel Knepp explained that the Township Zoning Ordinance requires houses
26 to be setback 100 feet from and lake, stream, or creek.

27 Dave stated that there is no place to build a house without being within
28 100 feet of this creek.

29 Joe Rivard stated that the Ordinance requirement must be in place to
30 prevent pollution from running into the creek and Joe asked what
31 precautions will be made to prevent damage to the creek.

32 Ethel Knepp stated that the Shoreline Protection strip is intended to
33 protect the water.

34 Frank stated that the house to the North of his lot is close to the
35 stream.

36 Tom Niswonger, the neighbor to the North does not know how close his
37 house is.

1 Ethel Knepp stated that the site plan shows the Niswonger house is about
2 42 feet from the creek.

3 Joe Rivard stated that the Township is concerned with the impact on the
4 creek if they grant a variance to be closer than 100 feet.

5 Dave Haywood explained that the DEQ permit requires a conservation
6 easement for the entire property that is not covered by the house and
7 driveway. This conservation easement requires that there be no cutting
8 and no mowing and this will prevent surface runoff. Dave also stated that
9 the shoreline protection strip that Frank has already planted will
10 protect the creek.

11 Joe Rivard recognized that the DEQ and the applicant made a compromise
12 with the protection of the creek considered.

13 Frank Schultz stated that the plan keeps the house as far away from the
14 creek as possible.

15 Roger Stoppel stated that a house could be located farther away.
16 Roger asked about the history of the house located to the North that
17 allowed it to be built so close to the creek?

18 Ethel Knepp responded that the setback requirement was 50 foot when that
19 house was built and the difference between 50 and 42 may have been a
20 measuring error.

21 Marlene Golovich asked how Frank determined the location of the house?

22 Frank Schultz stated that the first plan was approved by the DEQ with a
23 50 foot driveway. That plan would cover 5759 square feet with house and
24 driveway. Frank's new plan will cover 4050 square feet which makes a
25 smaller footprint of 980 square feet.

26 Marlene Golovich stated that a longer driveway will require more fill.

27 Frank Schultz stated that the property is mostly flat.

28 Roger Stoppel asked for an explanation on how Frank determined the square
29 footage.

30 Frank Schultz stated that the footprint of the first house plan was 5759
31 square feet. Frank figured the house and garage would leave a footprint
32 of 3456 square feet with 1003 square feet of decks and 1300 square feet
33 of driveway. Frank determined the second plan house and garage will cover
34 2335 square feet with 515 square feet of decks and 1175 square feet of
35 driveway for a total footprint of 4025 square feet.

36 Tom Niswonger asked for a explanation of the square footage of each
37 floor.

38 Frank Schultz determined that the second story of the house will be 1001
39 square feet.

40 Roger Stoppel asked why the applicants are now asking for a longer
41 driveway?

1 Frank responded that he wants the house in this location with the 96 foot
2 driveway.

3 Roger Stoppel stated that the longer driveway is pushing the house closer
4 to the creek.

5 Dave Haywood stated that the 50 foot driveway would locate the house 74
6 feet from the creek.

7 Frank Schultz reminded the Board that the DEQ approved the first plan
8 with the house 130 feet back from Lake Charlevoix and the second plan
9 keeps the same 130 feet lake setback.

10 Fred Parsons determined that the 50 driveway would locate the house 70
11 feet from the creek.

12 Marlene Golovich suggested that the house be moved closer to the road to
13 reduce the creek setback.

14 Dave Haywood explained that they did a significant plan change because
15 you didn't like the aesthetics of the plan approved by the DEQ and now
16 you are suggesting to put the house back in the corner of the lot close
17 to the road where it will not be aesthetically pleasing.

18 Roger Stoppel stated that he did not make any decision based on
19 aesthetics of the house, he only made decision based on setback from the
20 creek.

21 Dave Haywood stated that someone made suggestions to change the design
22 of the house.

23 Ethel Knepp stated that some neighbors did not like the design of the
24 house.

25 Frank Schultz stated that at least one ZBA member asked for a change in
26 the house design.

27 Bryan Graham reminded the ZBA that the house design is irrelevant to the
28 issue of the day which is the setback. Bryan asked if the DEQ permit
29 stated the exact location of where the house must be located.

30 Dave Haywood stated that the language of the permit does not state the
31 location but the permit refers to the plan dated 11-15-91 which show
32 exact location of the house.

33 Bryan Graham asked if the 11-15-91 plan stated that the driveway is to be
34 50 foot long?

35 Dave Haywood responded that the plan shows a 50 foot driveway because the
36 DEQ wanted to maintain a 130 foot setback from Lake Charlevoix. Dave
37 explained that they changed the orientation and configuration of the
38 house on the new plan and it still is setback 130 feet from Lake
39 Charlevoix.

40 Bryan Graham asked if it would be physically possible to locate the new

1 house design and orientation so the driveway would be 50 feet long? Dave
2 responded yes.

3 Bryan Graham asked if locating the new house design so it has a 50 foot
4 driveway would reduce the variance needed for a setback from Woods Creek?
5 Dave Haywood responded that it probably would.

6 Bryan Graham concluded that the plan before the ZBA with the 96 foot
7 driveway is not the location that would require the minimum variance from
8 Woods Creek and still allow reasonable use of the property.

9 Dave Haywood disagreed with that conclusion because a prudent man would
10 not place a house in that location therefore Frank is not being allowed
11 reasonable use of his land.

12 Joe Rivard stated that he believes the 50 foot driveway would not be
13 unreasonable.

14 Dave Haywood stated that he has handled 7 or 8 appeals from property
15 owners on Lake Charlevoix because of the distance from the Lake required.
16 Dave stated that the farther away from the Lake you are, the less
17 desirable the location is. Most people want to be close enough to have a
18 nice expansive view and this effects the value consideration. Dave also
19 stated that most people don't build their house in the corner of their
20 lot. This property has 300 feet of frontage on the road although some of
21 it is narrow.

22 Marlene asked if the Ordinance requirements were in effect when Frank
23 bought the lot.

24 Ethel Knepp stated that the rules in effect when he bought the land are
25 irrelevant, and the rules that are in effect when he applies for
26 construction must be followed.

27 Marlene Golovich wondered if he knew the limitations of the lot when he
28 bought it.

29 Bryan Graham stated that under the law it would not matter what rules
30 were in effect when he bought and the ZBA needs to determine if there are
31 practical difficulties based on unique characteristics of this lot that
32 justify a variance. In all variance requests, the ordinance requirement
33 predates the need for the variance. Bryan also stated that the ZBA should
34 consider that Frank Schultz did not create this lot.

35 Joe Rivard asked if most people would buy a lot this wet.

36 Dave Haywood responded that most people would consider their economic
37 situation, the area they want to buy land, and the likelihood that they
38 would be able to build on the land. Dave stated that 75% of his 200
39 clients have problems with wetlands. Most of these people would buy land
40 with wetland limitations.

41 Bryan Graham asked the ZBA to focus on the issues and he asked the ZBA to
42 discuss and consider the elevation variance. Bryan asked if there is any
43 place on this lot that meets the minimum elevation requirement?

1 Dave responded that no place on this lot is 590 feet above sea level
2 which is the minimum requirement.

3 Ethel Knepp stated that the elevation required would be measured to the
4 bottom of the house which is the top of the stilts.

5 Bryan Graham asked if the DEQ is requiring this house to be built on
6 stilts? Dave responded that is correct.

7 Tom Niswonger asked about the discussion in the last ZBA meeting minutes
8 where there was some questions whether a elevation variance was needed.
9

10 Ethel Knepp explained that the DEQ is requiring the house to be at least
11 two feet above natural grade. The natural grade is about 582 feet above
12 sea level and the plan shows that the top of the piling will be 584.60 so
13 a variance of 7 feet is needed.

14 Frank Schultz stated that the open space between the house and grade will
15 be covered with skirting.

16 Ethel Knepp stated that this house will stick out regardless of a 96 foot
17 or 50 foot driveway because the lot is open.

18 Frank Schultz stated that he is trying to keep the house in line with the
19 other houses in the area.

20 Fred Parsons asked for input from the neighbors.

21 Tom Niswonger presented photos that he said dispute the claim that trees
22 were not cut off of this lot. Tom stated that small willows were cut
23 near the mouth that caused creek erosion.

24 Ethel Knepp stated that Frank admitted that he cut vegetation.

25 Tom Niswonger stated that the elevation goes up near the South property
26 line and that's where the line of trees are. The creek today is 15 to 20
27 feet wide because it is a flood plain. Tom stated that his house, built
28 by someone else, was elevated with a rock wall which causes the flood
29 water to go onto the Schultz lot. Tom noted that the DEQ is limiting the
30 amount of fill used on the Schultz lot to 100 cubic yards. Tom said he
31 talked to Brad Wilkins today and Brad told him that the neighbors were
32 requesting the longer driveway and Tom wanted everyone to know that no
33 written record shows that the neighbors requested the longer driveway.

34 Bryan Graham reminded the Board that there is only one plan to be
35 considered tonight and that is a house with a 96 foot driveway.

36 Tom Niswonger stated that the DEQ testimony and the letter from Pat
37 Chaps, previous owner, shows that Frank Schultz knew the lot may not be
38 buildable when he bought it.

39 Bryan Graham stated that the ZBA is not deciding if this house can be
40 built on a wetland. That is not a Township decision. The ZBA is only
41 considering a creek setback and elevation.

1 Tom Niswonger stated that approving these variances is inconsistent with
2 the public interest. All neighbor agree that this plan is not in the best
3 public interest. Tom believes that a smaller house would be better and
there should be a requirement to plant more trees and larger trees.

5 Joe Rivard asked Tom if he brought pictures of his property?
6 Tom responded no.

7 Tom Niswonger stated that a previous owner filled his lot and split off
8 the Schultz property. Tom stated that he complained to township officials
9 for years about the cutting of trees on the Schultz lot and nothing was
10 done until Ethel Knepp became Zoning Administrator. Tom asked if Frank
11 Schultz violated township laws before the house was built, what will
12 happen after it is built?

13 Ethel Knepp reminded the Board that township law only prevents cutting
14 trees in the shoreline protection strip.

15 Fred Parsons made a motion to allow ZBA to go into session to draft
16 language to approve or deny the variances.

17 Bryan Graham noted that the Chairman is closing public comment and all
18 evidence that will be considered has been received. The ZBA will consider
19 and deliberate using the attorney prepared guidelines. Bryan reminded the
20 Board that they must consider the five criteria listed in the ordinance
21 for each variance request and they must answer yes to each statement
22 before they can grant a variance.

23 The first variance request considered is the 7 foot elevation variance
24 which will allow the house to be built at an elevation of at least 583
25 feet above sea level(IGLD).

26 Fred Parsons read the criteria listed in the Zoning Ordinance section
27 7.05C: 1. Will not be contrary to the public interest or to the spirit
28 and intent of this ordinance.

29 Roger Stoppel stated that the ordinance is nebulous at best, the public
30 interest can mean anything and the question is how much of a variance
31 from the requirement will they give.

32 Bryan Graham reminded the Board that the zone is R-1 and the applicant is
33 proposing an R-1 use and so this is a reasonable use of the property.
34 Bryan stated that the wetland issue has been decided by the DEQ so the
35 ZBA could consider the lot not a wetland. Bryan reminded the Board that
36 this lot is unique because no place on the lot will meet the elevation
37 requirement.

38 Marlene Golovich stated that the intent of the ordinance was not to
39 prevent reasonable use of property.

40 Roger Stoppel stated that his concern is how much variance will be
41 granted to minimize the impact on the creek. Roger stated that a one
42 story house could have the same square footage and less of an impact.
43 Roger stated that a two story house will be more of a public nuisance
44 than a one story because it will be higher.

1 Marlene Golovich stated that the elevation variance does not hurt the
2 public interest and the property can't be used without it.

3 Joe Rivard stated that the elevation variance is reasonable.

5 Fred Parsons Read the next criteria: 2. Shall not permit the
6 establishment within a zoning district of any use which is not permitted
7 by right within that district. Yes. 3. Will not cause any adverse effect
8 to property in the vicinity or in the zoning district or the township.

9 Ethel Knepp stated that the ZBA is not qualified to determine if this
10 will adversely effect the property, however, the DEQ determined that this
11 project will not adversely effect property in the vicinity.

12 Bryan Graham stated that the fact that the house will be built on stilts
13 may cause some neighbors to believe that their property values will be
14 hurt, however, the stilt construction was mandated by the DEQ. Bryan also
15 stated that the closer the house is to the ground the less of an impact
16 and the variance will allow the house to be two feet off of the ground
17 instead of 8 feet.

18 Fred Parsons read the next criteria: 4. Relates only to property that is
19 under control of the applicant. Yes. 5. Affects only property subject to
20 exceptional or extraordinary circumstances or conditions that do not
21 apply to other property or uses in the vicinity, and have not resulted
22 from any act of applicant.

23 Ethel Knepp stated that the grade is lower than neighboring property.

24 Bryan Graham stated that the applicant did not dig the property out, he
25 did not make it lower.

26 Fred Parsons read the first criteria from the Ordinance Section 7.05C to
27 consider the setback from the creek. 1. Will not be contrary to the
28 public interest or to the spirit and intent of this Ordinance.

29 Roger Stoppel pointed out the ambiguity of the ordinance because the
30 intent of the ordinance is to keep houses back 100 feet from creeks.
31 Roger stated that the ZBA should grant the minimum variance necessary to
32 allow this house to be built on this lot. The House could be moved back
33 to the corner and the owner knew there would be limitations when he
34 bought the land.

35 Bryan Graham asked if he could clarify the finding to state that the
36 intent of the ordinance is to grant the minimum variance necessary to
37 allow use of the land.

38 Roger agreed that this was true unless there are unforeseen
39 circumstances.

40 Bryan Graham confirmed that Roger was stating that the applicant chose to
41 place the house in a position that would not minimize the variance
42 needed.

43 Roger Stoppel agreed that was the finding of fact.
44 Marlene Golovich agreed with this finding of fact.

1 Joe Rivard agreed with this finding of fact.

2 Bryan Graham stated that if they find a negative finding on number one,
3 they can't grant the variance so they don't need to go through the rest
4 of the criteria.

5 Ethel Knepp asked if the ZBA could grant a smaller variance and force the
6 applicant to change the house location.

7 Bryan Graham stated that the ZBA could give the applicant the option to
8 change the plan and then we will open the hearing again.

9 Fred Parsons called a recess for ten minutes and the hearing reconvened
10 at 9:17 P.M.

11
12 Dave Haywood presented a new site plan to the ZBA with a 50 foot driveway
13 and he stated that 50 foot is the minimum setback from the road that the
14 applicant will accept. Dave Haywood stated that this plan will allow the
15 house to be setback 76 feet from Woods Creek requiring a 24 foot
16 variance. Dave reminded the ZBA that this is not where Frank Schultz
17 wants his house to be and they believe that the 96 foot driveway would be
18 more consistent with the neighborhood. Dave also stated that the 96 foot
19 driveway would allow better sighting to the lake, but the applicant is
20 tired of waiting for his house and he will accept the 50 foot driveway if
21 that is the only variance the ZBA will grant.

22 Roger Stoppel stated that the 76 foot setback to the roof line is
2 acceptable because it will be even more to the foundation.

24 Fred Parsons open the hearing to public comment.

25 Tom Niswonger asked the ZBA to require more trees and larger trees to be
26 planted. Tom explained that trees 3 feet high are to low. Tom stated that
27 he does not like the house being two stories and tall trees planted by
28 the house will make it more consistent with the neighborhood.

29 Fred Parsons read the rest of the criteria from the Ordinance section
30 7.05C: 2. Shall not permit the establishment within a zoning district of
31 any use which is not permitted by right within that district. Yes. 3.
32 Will not cause any adverse effect to property in the vicinity or in the
33 zoning district or the township.

34 Bryan Graham stated that the variance from the creek setback will not
35 cause the house to be closer to the neighbors property.

36 4. Relates only to property that is under control of the applicant. Yes.
37 5. Affects only property subject to exceptional or extraordinary
38 circumstances or conditions that do not generally apply to other property
39 or uses in the vicinity, and have not resulted from any act of the
40 applicant.

41 Bryan Graham stated that the Board may find that this property is
42 exceptional because it is lower than the surrounding property. Bryan also
43 stated that the building envelop would only be 20 feet wide if the full
44 100 foot creek setback was used and the Board may find that 20 feet is

1 not a sufficient envelope which would be the extraordinary circumstance.

2 Roger Stoppel stated that requiring trees to be planted in the view
3 corridor doesn't make sense because the owner will want to see the lake
4 from the house. Roger suggested planted small bushes and trees that they
5 can see over.

6 Bryan Graham stated that Frank had agreed to plant 24 trees in the lake
7 shoreline protection strip and 50 trees are already planted in the creek
8 protection strip.

9 Ethel Knepp stated that the DEQ did not want anything planted because of
10 the wetlands but Ethel convinced the DEQ to allow planting in the
11 protection strips.

12 Bryan Graham presented a list of proposed conditions that the ZBA may
13 want to attach to a variance approval.

14 Roger Stoppel suggested making the conditions reasonable so Frank will
15 not want to cut the trees down when they grow into his view of the lake
16 from the house.

17 Ethel Knepp explained that the applicant must plant and maintain the
18 shoreline protection strip. Ethel Knepp reminded the Board that the DEQ
19 conservation easement prevents cutting of vegetation on the entire
20 property.

21 Fred asked the ZBA for concurrence that the proposed conditions will be
22 included in the variance approval. The ZBA concurred.

23 Bryan Graham suggested that the hearing be adjourned tonight and
24 reconvened at a later date so he has time to prepare in writing the
25 Board's findings of facts and conditions.

26 Chair Fred Parsons adjourned this hearing and called a meeting to
27 reconvene this hearing on July 24, 1997 at 7:30 P.M.

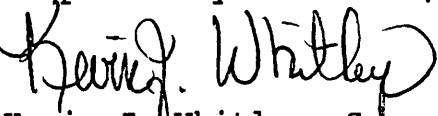
28 Ethel Knepp asked the ZBA to hold an election of officers.

29 Fred Parsons nominated Robert Alexander as Chairman of the Hayes Township
30 Zoning Board of Appeals. Roger Stoppel seconded the nomination.
31 Robert Alexander was elected unanimously.

32 Fred Parsons nominated Roger Stoppel as vice-chairman of the Hayes
33 Township Zoning Board of Appeals. Marlene Golovich seconded the
34 nomination. Roger Stoppel was elected unanimously.

35 Meeting adjourned at 9:50 P.M.

36 Respectfully Submitted,

37 
Kevin J. Whitley, Secretary