

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
HEARING
July 24, 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. This hearing is a continuation of the Zoning Board of Appeals hearing that was adjourned on 7-16-97 so the Township Attorney could prepare proposed written findings of facts and proposed conditions based on what the ZBA discussed and decided.

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, and Bryan Graham.

The purpose of this meeting is for the members of the Zoning Board of Appeals to review the proposed decision and order and to make a final decision on the variance requests.

The variance request before the ZBA is from Frank Schultz. Frank is asking for two variances from the Hayes Township Zoning Ordinance Section 5.13 (Shoreline Protection Strip) Frank is proposing to build a single family residence on a 1.2 acre parcel with tax number 15-007-310-022-00 located on Birdland Drive in the R-1 zone.

Fred Parsons announced that the approval of the minutes from the 7-16-97 hearing will be postponed until the next ZBA meeting.

Bryan Graham noted that the minutes refer to a seven foot variance from the minimum elevation of 590 feet above sea level. Bryan stated that the actual variance needed would be 6 feet because the elevation of the grade is 582.7 and the DEQ requires the house to be at least two feet above grade so the house will be at least 584.7 feet above sea level.

Fred Parsons stated that the ZBA is going to review the proposed decision and order before any comments are received from the applicant and the public.

The Zoning Board of Appeals did a page by page review of the proposed decision and order, corrected two typographic errors, and made no other changes.

Fred Parsons asked for comments from the applicant.

Dave Haywood, lawyer for Frank Schultz, explained that they submitted a plan to the ZBA that has a fifty foot driveway only because the ZBA was going to deny the variance needed for 96 foot driveway. Frank Schultz decided that getting approval for a plan with a fifty foot driveway would be better than no approval at all considering the amount of time the approval process has taken.

Dave Haywood also stated that Frank Schultz has submitted a new plan to the DEQ that has a 75 foot driveway. Dave stated that Brad Wilkens

1 told Frank that he would approve the 75 foot driveway.

2 Dave Haywood asked the ZBA to consider this new plan. Dave explained
3 that the 75 foot driveway would put the house in a location that would
4 have much better sighting and line it up consistent with the
5 neighbor's houses. Dave stated that this new location would add to the
6 value of the property because of the sightings and eliminate the house
7 being so close to the road on this open lot. Dave told the ZBA that
8 the applicant was not happy with the 50 foot driveway plan. Dave
9 reminded that the ZBA that Brad Wilkens is not the final decision
10 maker at the DEQ but he does have the authority to issue the permit
11 with the 75 foot driveway.

12 Dave explained that the new plan would require a 33.8 foot variance
13 because the house would be set back 66.2 feet from woods creek and
14 this variance increase of ten feet would be consistent with the
15 community and have no effect on the 5 considerations required in
16 section 7.05C of the Zoning Ordinance.

17 Ethel Knepp asked about which point on the house was used to measure
18 the setback on the newest plan?

19 Dave Haywood stated that he did not know what point the engineer used.

20 Ethel Knepp stated that the plan shows the 66.2 foot setback is
21 measured to the foundation. The Ordinance requires setbacks to be
22 measured to the closest point of the house which in this case would be
23 the overhang which is about three feet so the actual setback from the
24 creek would be 63 feet.

25 Tom Niswonger, the neighbor to the North, made three comments
26 regarding the newest plan: 1. Tom noted that the DEQ approval limited
27 the amount of fill to 100 cubic yards. Tom expects a 75 foot driveway
28 would need more than 100 cubic yards of fill. 2. Tom stated that if
29 you bring the house location away from the road, they will need to
30 remove more trees on the South side.

31 Frank Schultz stated that allowing a 75 foot driveway would not
32 require more trees to be cut.

33 Tom Niswonger made his final comment that there is a clump of trees in
34 the middle of the lot and moving the house location away from the road
35 might force these trees to be cut.

36 Ethel Knepp stated that the clump of trees in the middle of the lot
37 would have stayed when the setback from Lake Charlevoix was 130 feet
38 so she believes that those trees could be saved if this new plan is
39 used because the setback from Lake Charlevoix is 150 feet.

40 Fred Parsons closed the public comment part of this hearing.

41 Bryan Graham reminded the ZBA that they have two different plans to
42 consider.

1 Dave Haywood clarified that the applicant prefers the plan with the 75
2 foot driveway and they will drop all requests for a 96 foot driveway.

3 Bryan Graham reminded the ZBA that they are not allowed to grant
4 variances based on personal preferences and there must be practical
5 difficulties found before a variance is granted.

6 Fred Parsons stated that the ZBA covered the means for granting
7 variances at the last meeting.

8 FRED PARSONS MADE A MOTION TO ADOPT THE FOLLOWING DECISION AND ORDER.
9 ROGER STOPPEL SECONDED THE MOTION TO ADOPT THE FOLLOWING DECISION AND
10 ORDER:

HAYES TOWNSHIP
ZONING BOARD OF APPEALS

DECISION AND ORDER

APPLICANT: Frank Schultz

Hearing Dates: July 16, 1997 and July 24, 1997

PROPERTY DESCRIPTION

The property of Frank Schultz described as:

SEE ATTACHED LEGAL DESCRIPTION

hereinafter referred to as the "property."

APPLICATION

The Applicant desires to construct a dwelling and attached garage on his property on Birdland Drive. To allow this construction, Applicant is seeking a 50 feet variance from the 100 feet setback requirement from Woods Creek as provided in Section 5.13(A) of the Hayes Township Zoning Ordinance. In addition, the Applicant seeks a six (6) feet variance from the requirement that the lowest floor of any structure be no less than 590 feet above sea level (IGLD) as provided in Section 5.13(A) of the Hayes Township Zoning Ordinance.

The Board having considered the Application, a public hearing having been reconvened on July 16, 1997 and July 24, 1997 from the original hearing held on December 11, 1996, after giving due notice as required by law, the Board having heard the statements of the Applicant and the Applicant's attorney, the Board having considered letters submitted by members of the public and comments by members of the public, the Board

having considered 22 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 the property is bordered on the west by Lake Charlevoix and on the north by Woods Creek.
3. The Board finds that under Section 5.13(A) of the zoning ordinance a 100 feet setback is required from Woods Creek.
4. The Board also finds that under Section 5.13(A) of the zoning ordinance the lowest floor of any structure shall not be less than 590 feet above sea level.
5. The Board finds that the Applicant originally desired a 50 feet variance from the 100 feet setback requirement from Woods Creek as provided in Section 5.13(A) of the Hayes Township Zoning Ordinance and desires a 6.1 feet variance from the requirement that the lowest floor of any structure be no less than 590 feet above sea level (IGLD) as provided in Section 5.13(A) of the Hayes Township Zoning Ordinance to allow the construction on Applicant's proposed dwelling.
6. The Board also finds, however, that at the hearing the Applicant agreed to submit a revised plan as specified in plans prepared by Performance Engineering dated June 25, 1997 that shows a 50 feet driveway.
7. In connection with the Applicant's construction plans, the Board finds that the Michigan Department of Environmental Quality (MDEQ) has approved Applicant's plans dated October 15, 1991 and revised January 23, 1997 to construct a dwelling and attached garage on the property. The Board further finds that the MDEQ's approval was based on a plan similar to the revised June 25, 1997 plans presented by the Applicant to this Board at the hearing.
8. The Board further finds that while the MDEQ has approved the construction of a dwelling and attached garage on the Applicant's property based on the plans submitted to it, the MDEQ approval did not specifically mandate where on the property the development should be located, but does require that the dwelling and attached garage must be built no less than 24 inches above the natural grade and requires that the driveway be no longer than fifty (50) feet.
9. As a result, the Board finds that the MDEQ approval does not preclude it from applying the variance standards of Section 7.05 C. of the zoning ordinance to determine whether the requested variances

should be granted as they relate to the location of the development on the property.

FINDINGS OF FACT UNDER 7.05 C. OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 7.05 C. of the zoning ordinance for each of the following standards listed in that section. An affirmative finding on all standards is necessary to grant a variance.

1. Will the requested variance be contrary to the public interest or to the spirit and intent of the zoning ordinance?

a. The Board finds that the public interest and spirit and intent of the zoning ordinance is to permit the use of property consistent with the uses for which it is zoned.

b. The Board also finds that generally the public interest and the spirit and intent of the zoning ordinance is to grant the minimum variance needed to permit the property owner a reasonable use of his or her property.

c. The Board, however, finds that in the context of the requested elevation variance, more that the minimum variance is in the public interest. Because the Applicant's property is a wetland and any dwelling must be constructed on pilings, the smaller the elevation variance, the taller the required pilings must be on which the dwelling will be built. For example, if no variance were granted, then under MDEQ requirements, the dwelling would need to be built on approximately eight (8) feet pilings. If, on the other hand, the maximum variance were granted, then the dwelling could be built on 24 inch pilings, as opposed to eight (8) feet pilings, the fact that the dwelling is construction on pilings can be more easily disguised, and thus would be more compatible with the surrounding neighborhood.

d. The Board finds that the draft MDEQ wetland permit requires that the Applicant's driveway be no more than 50 feet long.

e. The Board finds that the position of the dwelling and attached garage on the property as proposed on the Performance Engineering site plan dated June 25, 1997 results in a driveway about (50) feet long, is consistent with the MDEQ requirement, and would require only a 24 feet variance from Wood Creek.

f. The Board therefore finds that with the Applicant revised plans, as specified in plans prepared by Performance Engineering dated June 25, 1997, the 24 feet variance from Wood Creek would

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

g. The Board finds that the draft MDEQ wetland permit requires that the Applicant's dwelling and attached garage be constructed on open spaced pilings and that the residence and garage lower floor joists and exterior siding maintain a 24 inch minimum open space above natural grade.

h. The Board finds that the highest natural grade in the area proposed for the dwelling and attached garage is 582.57 feet above sea level (IGLD) and the lowest natural grade in the area proposed for the dwelling and attached garage is 582.10 feet above sea level (IGLD).

i. The Board therefore finds that taking into consideration the MDEQ open space requirement beneath the structures the elevation of the proposed dwelling and attached garage will be approximately 584.57 feet above sea level (IGLD).

j. As a result, the Board finds that the requested variance of 6 feet from the requirement that the lowest floor of any structure be no less than 590 feet above sea level (IGLD) is the variance needed to construct the proposed dwelling and attached garage on the minimum 24 inch MDEQ pilings requirement, and therefore would not be contrary to the public interest or to the spirit and intent of the zoning ordinance.

2. Does the requested variance permit the establishment within a zoning district of any use which is not permitted by right within that district?

a. The Board finds that the Applicant's property is zoned R-1, which permits the construction of single family dwellings and accessory structures.

b. The Board finds that the Applicant's has proposed to construct a single family dwelling and attached garage on his property.

c. The Board therefore finds that the requested variances will not permit the establishment within the R-1 zoning district of a use which is not permitted by right within that district.

3. Will the requested variance cause any adverse effect to property in the vicinity or in the zoning district or in the Township?

a. The Board finds that the setback variance from Wood Creek and the elevation variance would not allow the Applicant to construct his proposed dwelling and attached garage any closer to adjoining properties than would otherwise be allowed under the regular

sideyard setback requirements of the zoning ordinance.

b. The Board finds that the requirement that the structures will be build on pilings was mandated by the MDEQ and therefore is not related to the elevation variance. In other words, the Board finds that since the property is a wetland, the MDEQ would still require that the structure be built on open spaced pilings and that a 24 inch open space be maintained beneath the structures regardless of whether an elevation variance is required.

c. The Board finds that the concerns expressed by the public that property values will be reduced if the proposed construction is allowed relate primary to the fact that the structure will be located on wetlands and will be constructed on pilings. The Board, however, finds that these concerns relate to the MDEQ decisions and not to the variances themselves.

d. The Board also finds that there was no persuasive evidence presented the proposed dwelling and attached garage would significantly depress property values in the neighborhood.

e. As a result, the Board finds that the variances under consideration will not in and of themselves cause any adverse effect to the property in the vicinity or in the zoning district or in the township.

4. Does the requested variance relate only to property that is under control of the Applicant?

a. The Board finds that the variances under consideration relate only to property owned by the applicant.

5. Is the need for the requested variance due to exceptional or extraordinary circumstances or conditions relating to Applicant's property that do not generally apply to other property or uses in the vicinity, and not due to any act of the Applicant?

a. The Board finds that given the width of Applicant's property and the 15 feet side yard setback requirement, if the entire 100 feet setback from Wood Creek were observed, the Applicant would be left with only a building envelope width of approximately 20-25 feet. The Board finds that this small building envelope width is insufficient in practical terms to construct a single family dwelling on the property, a use permitted in the R-1 district.

b. The Board finds that as determined by the MDEQ the Applicant's property is a wetland.

c. The Board finds that there is no location that is not a wetland and that no location on the property can meet the 590

feet elevation requirement of the zoning ordinance.

d. The Board finds that the Applicant did not create the wetland on his property and did not excavate the property to create the low level topography.

e. The Board finds that even though the Applicant may have known that the property was a wetland at the time he purchased the land and that the property may be unbuildable, those facts do not amount to a self-created hardship, since the Applicant's knowledge did not change the of elevation the property and did not alter the property boundaries.

f. The Board therefore finds that the variance under consideration are due to exceptional or extraordinary circumstances or conditions relating to Applicant's property that do not generally apply to other property or uses in the vicinity, and are not due to any act of the applicant.

DECISION

Upon motion seconded and passed, the Board GRANTED the Applicant a 24 feet variance from the 100 feet setback from Woods Creek as required in Section 5.13(A) of the Hayes Township Zoning Ordinance and a six (6) feet variance from the requirement that the lowest floor of any structure be no less than 590 feet above sea level (IGLD) as provided in Section 5.13(A) of the Hayes Township Zoning Ordinance, subject to the following express conditions:

CONDITIONS

1. Applicant shall construct the proposed dwelling and attached garage on his property in compliance with the revised site plan prepared by Performance Engineering dated June 25, 1997 which shows a 50 feet driveway.
2. Applicant shall plant and maintain no less than 24 pine and cedar trees (minimum 3 feet tall) in the 50 feet shoreline protection strip adjacent to Lake Charlevoix.
3. Applicant shall plant and maintain no less than 40 pine trees in the 50 feet shoreline protection strip adjacent to Wood Creek.
4. Applicant shall obtain any necessary wetland permit from the Michigan Department of Environmental Quality to construct the proposed dwelling and attached garage and shall comply with any and all conditions of that permit.
5. Applicant shall obtain any necessary soil erosion and sedimentation

control permit and shall comply with any and all conditions of that permit.

6. Applicant obtain any necessary permits for a sewage system and a well, and shall comply with any and all conditions of those permits.

7. Applicant shall obtain any other necessary federal, state, or local permits, and shall comply with any and all conditions of those permits.

TIME PERIOD FOR JUDICIAL REVIEW

MCLA 125.293a; MSA 5.2963(23a) provides that a person having an interest affected by the zoning ordinance may appeal a decision of the Zoning Board of Appeals to the Circuit Court. Pursuant to MCR 7.101 any appeal must be filed within twenty-one (21) days after this Decision and Order is adopted by the Zoning Board of Appeals.

DATE DECISION AND ORDER ADOPTED

JULY 24, 1997

Fred Parsons,
Acting Chairperson

Kevin J. Whitley
Recording Secretary

Approved as to Form:

Bryan E. Graham (P35708)
YOUNG, GRAHAM & ELSENHEIMER, P.C.
Township Attorneys
P.O. Box 398
Bellaire, Michigan 49615
(616-533-8635

A ROLL CALL VOTE WAS TAKEN AND ZONING BOARD OF APPEALS MEMBERS VOTED YES IF THEY AGREED TO ADOPT THE DECISION AND ORDER AND APPROVE THE VARIANCES:

ROGER STOPPEL YES

JOE RIVARD YES

MARLENE GOLOVICH YES

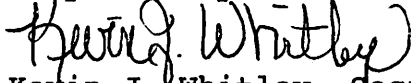
FRED PARSONS YES

THE DECISION AND ORDER WAS ADOPTED BY UNANIMOUS DECISION.

Fred Parsons reminded all present that all parties have the right to appeal this decision to circuit court within 21 days.

ROGER STOPPEL MADE A MOTION TO ADJOURN. MOTION SECONDED BY MARLENE GOLOVICH. MEETING ADJOURNED AT 8:00 P.M.

Respectfully Submitted,



Kevin J. Whitley, Secretary