

HAYES TOWNSHIP BOARD OF APPEALS  
MINUTES  
May 29, 1991

The Hayes Township Zoning Board of Appeals meeting was called to order by Chairman Parsons at 7:33 p.m.

Board members present were Fred Parsons, Lloyd Kuebler, Betty Straw, William Henne, and Robert Alexander. Also present were Clerk Knepp, Zoning Administrator Hess, Township Attorney Arner, Applicant Bill Rimmelin, and audience participants; Jim Rudolph, Paul Hoadley, Joyce Rimmelin, Tori Fisher, Bea and Donald Macgregor, and Leah Green.

The purpose of the hearing was to consider the modification of the Zoning Board of Appeals findings and decision, or reaffirm its original decision, in the matter of William Rimmelin, lot 21, Michigan Shores Sub-division. Mr. Rimmelin had requested a 50 foot frontyard variance from Section 5.13A from the Hayes Township Zoning Ordinance on January 10, 1990. The hearing is by order of the Circuit Court for the County of Charlevoix.

Zoning Board of Appeals members introduced themselves and Chairman Parsons introduced Township Attorney Arner, Supervisor Hoadley, and Zoning Administrator Hess. Mr. Rimmelin introduced other members of the audience.

Chairman Parsons asked Attorney Arner to explain exactly why the Court required the Zoning Board of Appeals to rehear the Rimmelin matter.

Tim Arner cited:

Mr. Rimmelin had requested a variance from the zoning ordinance, which was denied. Mr. Rimmelin appealed that decision through Circuit Court, which is his right to do by Michigan law. Judge Pajtas, Circuit Judge, wears the hat of an appellate court to hear these types of appeals. The Michigan statute MCL 125.293a(1); MSA 5.2963(23a)(1), per the Circuit Court's Opinion, provides, in part:

Upon appeal, the circuit court shall review the record and decision of the Board of Appeals to insure that the decision:

- (a) complies with the constitution and laws of the state,
- (b) is based upon proper procedure,
- (c) is support by competent, material and substantial evidence on the record, and
- (d) represents the reasonable exercise of discretion granted by law to the Board of Appeals.

MCL 125.293a(2); MSA 5.2963(23a)(2) provides:

If the court finds the record of the Board of Appeals inadequate to make the review required by this action, or that there is additional evidence which is material and with good reason was not presented to the Board of Appeals, the court shall order further proceedings before

the Board of Appeals on conditions which the court considers proper. The Board of Appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. the supplementary record and decision shall be filed with the Court.

This subsection permits the circuit court to order further proceedings by the Board if it finds that the record provided is inadequate to make the review required by this section, or there is material evidence which was not, with good reason, presented to the Board. The court is of the opinion that the record is insufficient for the Court to engage in a meaningful review as required by MCL 125.293a; MSA 5.2963(23a). The ZBA only considered the issues raised by the petitioner and ruled upon them. The minutes would suggest that such matters as unnecessary hardship were considered in that William Henne made the motion to deny the variance because it failed to meet the criteria of Section 7.05C(1), (2), and (5) of the zoning ordinance. The minutes of the January 10, 1990 do not express the reasons or rationale utilized by the Board to arrive at that conclusion. In order for the Court to conduct a meaningful review of the actions of the ZBA a more complete record as to the Board's findings and the rationale for its conclusions is necessary.

On remand the ZBA may consider any additional evidence that may be presented by the petitioner. The ZBA should consider each issue or challenge presented by the petitioner and make its findings and conclusions a matter of record in the minutes. Upon remand the ZBA may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the Court.

Chairman Parsons explained that the next step in the Zoning Board of Appeals procedure would be that those in favor of the proposed changes would be heard first and those opposed to the proposed changes would be heard last.

Mr. Rimmelin stated that he wanted to present new evidence, which was not presented to the court. Monte Hunt, Zoning Administrator, talked to his wife in 1987. Mr. Rimmelin presented a letter from Monte Hunt, dated August 17, 1989 in which it states, in part, "on August 17, 1987, Mrs. Rimmelin allowed me to look at the recently constructed beach deck you have built." A letter from Mr. Hunt, dated August 30, 1989 was also presented, which states, in part, "Your application for a "dock" with a \$30 fee is herein returned. I cannot grant a permit on the information on your application nor can I on my observation of the structure. It is clearly not an addition, a deck, an accessory building, etc. Since it is entirely on the beach area, I do not believe it is properly labeled "dock"." Mr. Rimmelin stated that in 1987 the township required a 50 foot setback not a 100 foot setback from the normal high water mark. He did not know when the setback changed. Mr. Rimmelin called the "structure" a platform over rocks.

Mr. Rimmelin asked if his neighbors was notified or anyone had written letters. Zoning Administrator Hess responded that he had received five letters which he turned over to the Zoning Board of Appeals to be read and given to the clerk for the record. Mr. Rimmelin indicated he had a petition signed by approximately 40% of the Michigan Shores property owners.

Tim Arner advised the ZBA members that the court did conclude, in its first opinion, that the ZBA's decision that this was a structure was correct so the Board doesn't need to re-decide that it was a structure because the court has affirmed that.

William Henne asked Mr. Rimmelin if he was claiming a hardship? Mr. Rimmelin responded that he was going to show the Board pictures of other structures, at Nine Mile Point Condominiums, which do not meet the 100 foot setback. John Hess reminded the Board and Mr. Rimmelin that the Nine Mile Point Condominium was allowed to keep the 50 foot setback as part of the PUD. The PUD had been approved prior to the setback being changed to 100 feet.

William Henne asked Mr. Rimmelin again if he was claiming a hardship? Mr. Rimmelin stated that if he had to move it would be a hardship. William Henne then asked in what way would it be a hardship? The response was his knee, it would cost a fortune to move it. William Henne asked if it was a financial hardship? Response, it could be, but physically it definitely would be.

William Henne asked if the new evidence being presented was the letters and the petition? Mr. Rimmelin responded he didn't see all the letters, but the letter from Monte Hunt was never seen by the judge. The Clerk responded that a copy of the list of eight property owners within 300 feet of the subject property, who were notified of the hearing, was sent to the Board of Appeals members and Mr. Rimmelin.

William Henne asked if there was anything different about Mr. Rimmelin's lot from the other lots in Michigan Shores? Mr. Rimmelin responded "no, I can't think of anything." Tori Fisher stated that it the property is craggier and rockier than her property. There is no sandy beach.

William Henne asked if the setback of Mr. Rimmelin's house is the same as the setback of the other houses in the area? Mr. Rimmelin responded "yes." Henne: "so the beach area is about the same except there may be a few more rocks?" Mr. Rimmelin responded "its all rocky all the way down and we're all lined up pretty even, as a matter of fact the new house next door, Butcher's, had to be setback a little further."

Mr. Rimmelin asked when the setback was changed? John Hess advised that his ordinance book indicates the change being made January 4, 1988. Mr. Rimmelin said his letter from Monte Hunt was dated August of 1987. Jim Rudolph asked the Clerk if she wasn't the Zoning Administrator in 1987? The Clerk responded that she was Zoning Administrator until December of 1988. The first paragraph of Mr. Hunt's letter (dated August 17, 1989) states Mrs. Rimmelin allowed him to look at the recently constructed beach deck on August 17, 1987. The Clerk suggested that there was a typo when the year was typed. Mrs. Rimmelin stated that a man came to their house in 1987, stating he represented the township, and asked if he could look at the property. Clerk Knepp suggested that it was probably the assessor because Monte Hunt didn't live in the Township in 1987.

Chairman Parsons asked Attorney Arner what the Township's position is in the case of a man presenting himself as a representative of the Township, and Mrs. Rimmelin doesn't know who it was. There is

documented proof that Ethel Knepp was zoning administrator at the time. Tim Arner responded that Mr. Rimmelin's presented this evidence and the Zoning Board of Appeals can give what weight to it they want.

Zoning Administrator Hess suggested that the real question is even if Mr. Rimmelin started construction of the structure in 1987, when the setback was 50 feet, is the structure within the 50 foot setback area?

Tim Arner asked if the proper course of action shouldn't have been to apply for a zoning permit to build a structure. John Hess stated "yes it would and Mr. Rimmelin applied for a permit in 1989."

Robert Alexander stated that if Mr. Rimmelin built the structure in 1987 a zoning application should have been completed in 1987 which would have given him approval to build a structure 50 feet from the normal high water mark. Because the permit application was in 1989 the ZBA should be dealing with the regulations in place in 1989 not in 1987.

Chairman Parsons asked if it was the consensus of the Board that they should be dealing with the permit application dates? Lloyd Kuebler said he feels the Board has to go with when the application was made. Betty Straw agreed. William Henne agreed with Robert Alexander.

William Henne asked John Hess if there was anything different in the rationale now than there was when the ZBA made their decision in 1990?

John Hess responded that "basically there is no difference in the evidence presented. The ZBA's decision should be based on the same facts that were used in the last hearing and if you do that you will probably come up with the same conclusion".

Paul Hoadley suggested that it would be beneficial to persons in the audience if the ZBA read Section 7.05C of the Zoning Ordinance so comments can be made based on the criteria of this section.

William Henne read Section 7.05C. He stated that on the original motion to deny it was based on Section 7.05C(1), (2), and (5). In his opinion, when he read the Judge's opinion it was not disagreeing with the decision of the ZBA, but was disagreeing with the format as the reasons for each of the three criteria.

Mr. Rimmelin read Section 5.13(H)(3) which states:

(H) Property owners may apply to the Zoning Administrator for permission to clear a section of the lakefront for recreational purposes under the following conditions:

(3) In areas of wetlands, no sand or fill shall be used, but boardwalks or platforms may be constructed.

Clerk Knepp noted the zoning administrator makes that determination.

Mr. Rimmelin stated Monte Hunt suggested he went for the variance. All he did was what Monte told him to do.

Tori Fisher asked if all 5 criteria, in Section 7.05C had to be met? Did the township make that up? John Hess responded that all 5 conditions in the section pertaining to granting variances had to be

met and the State Legislature made that up as part of the enabling legislation.

Tori Fisher asked to address the ZBA. "She lives on number 1 Nine Mile Point Drive. She built her house about three years ago and she has been around. Some people love me and some people hate me as to my dealings with the township, her dealings have been about safety for area residents and health as far as gravel pits are concerned. The Township has allowed gravel mining without adequate restrictions, where we've had to go to court over the issue, but I'll get back to the subject".

Chairman Parsons advised Mrs. Fisher that one of the things the Chairman does is to deal with a piece of property not with personalities.

Tori Fisher continued "that a piece of property is part it, but a current problem the Michigan Shores Association has with the township Board is an erosion and runoff problem that has not been dealt with sufficiently. Here Mr. Rimmelin is in front of the ZBA about a structure that is aesthetic in nature, none of the neighbors have a problem with it, not only is it not dangerous but railings being built on it makes it safer. Have a problem with number 5 of the conditions of Section 7.05C of the Ordinance. My property on lots 1 and 2 doesn't have the craggy rocks that Bill Rimmelin and Weier's old property have. Their property is a little bit higher. They are paying lakeshore property taxes on Lake Michigan. They can't use that property without a deck with railings on it without it being safe. I really have a problem with the township stepping in refusing to allow this structure, because if he doesn't have it he can't use his property which he is paying a premium for lakefront property. I know the township has rules they have to follow, but if he goes back into court I'm going to go there and I'm going to testify".

Chairman Parsons noted that the burden of showing the need for a variance is on the applicant. If the Board finds that the ordinance requirements can't be met he'll get a variance. Lets stick to the issue the court has given us to work with which is Section 7.05. My job as the chairman is to maintain order.

Mr. Rimmelin requested that all letters received be read into the minutes. Chairman Parsons read all letters aloud. A synopsis of the letters were:

Joel & Carolyn Darby - The walkway and deck that has been constructed on their beach does not interfere with their property or view of the shoreline and is not in anyway a detriment to out lot.

Thomas Butcher - Are in no way offended by the structure, nor does it impede our view of the lake. Does not detract from the neighborhood.

Michael West - Has no objections to granting Mr. Rimmelin's variance for his walk on Lake Michigan. Does not interfere with my use of the lakefront.

John Murray - Has no objections to variance being granted. Does not interfere with my use of the lakefront.

David Hayes - No objection to variance. Does not interfere with use of the lakefront.

Donald MacGregor spoke in support of the structure. They find it aesthetically pleasing and it doesn't bother them at all. Has not heard anything objectionable from any property owners in the Association.

The Zoning Board of Appeals discussed Section 7.05C and the conditions that must be met in order to grant a variance. The following is the discussions:

It shall be found by the Zoning Board of Appeals that any variance granted:

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

William Henne stated that the intent of the ordinance is to have a shoreline protection strip, which protects the lake, to act as a buffer strip. The intent is for the vegetation and everything within the shoreline protection strip to remain, as nature put it, and not be disturbed by man.

Robert Alexander asked why a boardwalk would be allowed within the shoreline protection strip? William Henne responded the intent of a boardwalk is to allow you to be able to walk through a wetland without disturbing a wetland. This is not a wetland. The ordinance specifically says a boardwalk may be constructed in a wetland.

Chairman Parsons recognized Zoning Administrator Hess's wish to clarify the issue raised by Robert Alexander. He read Section 5.13(A), which states, in part:

"No building or structure, except boardwalks, docks and launch ramps shall be erected closer than one hundred (100) feet from the shoreline at normal high water level of any lake".

John Hess continued stating that a boardwalk is an adjunct to a dock to traverse some area, which could be a wetland, dune, or whatever, to get to the water. It talks about boardwalk.

Betty Straw noted that the pictures presented at the original hearing showed a flat wooden deck. However, the pictures that were presented to the court was not, because they were pictures of what appears to be a boardwalk with a railed platform at the end. In other words the Board of Appeals had not dealt with the same pictures the court were presented.

William Henne noted that Section 5.13(H)(2)(3) of the Zoning Ordinance deals with the construction of boardwalks, which reads:

(H) Property owners may apply to the Zoning Administrator for permission to clear a section of the lakefront for recreational purposes under the following conditions:

- (2) A shoreline protection strip or greenbelt of 50 feet in depth shall be maintained, or planted, if not exists, behind the area to be cleared.

(3) In areas of wetlands, no sand or fill shall be used, but boardwalks or platforms may be constructed.

It was the consensus of the Board that if a variance is granted it would be contrary to the public interest and to the intent of the zoning ordinance.

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

William Henne stated that structures are not permitted within the setback area of this district or any district. If a variance was granted it would permit the establishment of a use which is not allowed.

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

Not applicable.

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

Not applicable.

(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.

William Henne stated that all Michigan Shores property is the same as far as the shoreline protection strip. Per Mr. Rimmelin's admission all lots are essentially the same. The applicant has shown no hardship or exceptional circumstances. He can use the shoreline. It may be nicer if you have a platform there. Number 5 deals with whether or not the property is unique, and in William Henne's opinion it is not unique.

Tori Fisher stated that "she feels there is a misunderstanding of the topography on the property because its different from the other properties. The rocks are huge. If someone walks out Mr. Rimmelin's door and falls on the rocks who is responsible? Mr. Rimmelin's request should be granted or the township should be prepared to accept the responsibility if someone is hurt out there".

William Henne advised Mr. Rimmelin that he had been advised at the last meeting that he could put a dock into the water.

William Henne made a motion to affirm the original decision the Board of Appeals made on January 10, 1990 for basically the same reasons which were based on Section 7.05(C) subsections 1, 2, and 5, because:

(1) Granting this variance would be contrary to the public interest and spirit and intent of this ordinance because it has been determined, by all parties, to be a structure and is not a use allowed in a setback area.

(2) Granting this variance would permit the establishment within a zoning district of a use which is not permitted by right within that

district because structures are not allowed in a setback area of this district or any other district in the township.

(3) This property has no exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity, and building this structure has resulted from an act of the applicant. This property is essentially the same as all the other properties in Michigan Shores and its vicinity with regard to the setback area.

For these reasons and based on the discussions of the five conditions for granting a variance I, William Henne, move to deny the request for a 50 foot frontyard variance from Section 5.13A of the Hayes Township Zoning Ordinance.

Robert Alexander seconded the motion.

Roll call vote.

Ayes:

Nays:

Robert Alexander  
Lloyd Kuebler  
Betty Straw  
William Henne

None

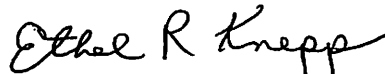
Motion Carried.

William Henne asked if the ZBA should discuss whether the structure has to be removed. Tim Arner advised the ZBA that no decision has been made by the court. Judge Pajtas will read the minutes of this meeting and give an opinion. That opinion will determine whether Mr. Rimmelin has to remove the structure.

Betty Straw made a motion to adjourn the meeting. William Henne seconded the motion. Voice vote. Ayes; all. Nays; none.

Meeting adjourned 8:48 p.m.

Respectfully Submitted,



Ethel R. Knepp, Clerk