

HAYES TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES
November 06, 1991

The Zoning Board of Appeals meeting was called to order by Chairman Parsons at 7:30 p.m.

Board members present were Fred Parsons, Lloyd Kuebler, William Henne, and Robyn Clink. Robert Alexander and Zoning Administrator Hess was absent. Chairman Parsons explained the zoning administrator was not going to be able to attend the meeting because he had a prior commitment to meet with Little Traverse Township. Also present were Secretary/Clerk Ethel Knepp, Scot Harper, Mr. & Mrs. William Darnton, Barry Wood, Paul Ivan, and Paul Hoadley.

The meeting was called for the purpose of hearing a request from William and Mrs. Darnton, owner of property number 15-007-130-014-00, for up to a 22 foot variance from Section 5.13, Shoreland Protection Strip, of the Hayes Township Zoning Ordinance. The applicant requests building an addition to the front (lakeside) of their home.

Barry Wood, building contractor for the Darnton's, explained what the application was for. He stated there is an existing deck on the home that extends almost fourteen (14) feet. The proposal is to put a wall in (enclose deck) at ten (10) feet, increasing the living area in the home, and adding approximately 3 feet to the existing deck to create a landing for the stairs. Mr. Wood went on to explain that the shape of the lot precludes going in any other direction. He also stated that the home was built in 1970 and met all the setback regulations, with room to spare, at that time. The addition will still allow a setback of 75 feet from the lake.

Fred Parsons explained to the applicants that the burden of showing a variance should be granted is on them. If the Board of Appeals finds that the requirements of the ordinance can be met, or that the criteria for getting a variance cannot be met, than a variance is not warranted.

Mrs. Darnton explained that one of the things that is not shown on the site plan is that all they want to do is put a roof over the existing deck to create additional living space and not go any further than the deck that is already there. The family is growing and there is not enough room to set up a dining room any more. There is also a big old oak tree close to the front of the deck that she insists cannot be removed. Mrs. Darnton presented the building plan for the new construction. The existing deck is the only exit on the second level. The home is on a hill and that is why the home was built on levels. If they built on the north side of the home they would need to request a variance for the side yard setback area and it would not allow them to enlarge the living area of the home they want to have enlarged.

Paul Ivan, son-in-law of the Darnton's, explained that the entire east end of the home is glass which wouldn't be in compliance with the current building code. What precipitated this decision to add on to the dining room was the need to modernize the house as it doesn't currently meet the building code, although it met all the zoning and building codes when it was built.

Mrs. Darnton explained that although all the glass allows for a beautiful view of the lake it makes it difficult to heat the home in the winter. When the home was built it wasn't used in the winter time, however, now there are three generations who like to come up and enjoy the winter sports. They want to install a more efficient fire place, modernize the heating units, replace the glass, thus taking care of all the deficiencies with this new construction.

Mr. Darnton asked if the deck is considered part of the existing house per the zoning ordinance. Clerk Knepp responded that if you add a deck or porch to a home you are not required to get a zoning permit, however, you must meet the setback regulations. The ordinance requires a zoning permit when you are adding living space. Adding a deck doesn't require a zoning permit however you are required to get a building permit from the County Building Department.

Bill Henne asked if there is a foundation under the existing deck? Barry Wood responded there are footings for 4 x 4 to support the deck. Footings and foundation can be easily built to code.

Mrs. Darnton explained the deck needs to be replaced anyway.

Fred Parsons stated that when he initially looked at the application he felt the applicants were requesting to expand on a non-conforming building, however its not, because its staying within its own boundaries. Clerk Knepp responded that when the home was built the setback from the lake was 50 feet and they had built the home well beyond the required setback.

Fred Parsons explained that the Board of Appeals members were required to consider several items, in order to make their decision, such as dimensionally the zoning ordinance cannot be physically met by an existing lots shallowness, narrowness, irregular shape, topography, natural characteristics, and if it would inhibit the lawful location of the home, and its accessories such as septic system, sheds, and garages. They think about the physical hardships that are unique to a particular piece of property. They also have to think about the neighboring properties. Fred then asked the secretary if there had been any responses to the notice of this hearing? The secretary responded there had not been. Fred then explained that the Board of Appeals members are also required to find that any variance granted must meet all the criteria of Section 7.05 of the Hayes Township Zoning Ordinance.

Fred Parsons stated that he feels the applicant has shown there is no other way to expand.

Paul Ivan stated that in terms of expanding, just to enlarge the home, this could be done, however, architecturally there isn't any way to do what the Darnton's want to accomplish in any other direction. Enclosing the deck is also the only way they will be able to correct the deficiencies of the home.

Bill Henne read and responded to Section 7.05 of the Zoning Ordinance stating:

"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.

It will not be contrary.

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

The zone district is R-1, Residential-Single Family, and it will not change the use.

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

It will not cause any adverse effect.

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

It does.

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.

The topography of the property makes it unique, however this criteria needs to be discussed."

Lloyd Kuebler stated that the applicant is requesting to enclose an existing deck without building closer to the lake?

Robyn Clink stated they seem to have a unique situation in that they have no where else to add on, they are insistent in keeping the landscaping natural (by refusing to allow any trees to be removed). Robyn then asked how they intended to get the cement in install the necessary footings and foundation for the addition? Barry Wood explained that he has had explicit instructions that the cement trucks had to be parked in the drive and the cement will be brought in with wheelbarrow's in order to not disturb the trees.

Robyn Clink then asked about the plan calling for the addition of a deck? Barry Wood responded that the plan called for a new deck addition of 3 feet to the existing deck. He explained that they wanted to enclose 10 feet of the existing 14 foot deck. Adding the 3 feet would allow for a 7 foot landing for the existing stairs that go to the lower deck.

Bill Henne explained that an alternative would be to not add on to the existing deck. He added that if a neighbor came to the Board of Appeals and wanted to add on to the front of their home, which was within the 100 foot setback from the lake, why couldn't they also do it? What is different from the applicant's house to the homes next door? Mrs. Darnton responded that all the homes next door are set further back than they are. Bill Henne added that when he speaks about neighbors he means anyone on the lake. Barry Wood stated that the topography of this property makes it unique and when the setback was changed to 100 feet it created a hardship to the applicants.

Mr. Darnton stated that basically they have no quarrel with zoning because they support zoning.

Bill Henne stated he had an idea, which may be a way of compromising on the issue. He doesn't feel the request meets number 5 of the criteria in Section 7.05 of the Ordinance, however, he may be able to suggest a way they can meet number 5. If the applicant wanted to eliminate the new deck, and remodel the old deck, so that the stairs could be accommodated, they would stay within the footprints of the existing home. Barry Wood suggested that the encroachment created by the addition of 3 feet would be a minimal encroachment. Bill Henne responded that he realizes that it was a minimal request, and he appreciates that there are honorable intentions and all the considerations being given regarding saving the trees, however none of those things are reasons to grant a variance.

Clerk Knepp stated that the 22 foot variance request doesn't include the addition of the new deck. The application should have stated the request was for up to a 26 foot variance.

Mr. Darnton explained that they needed a some room for a landing because it wasn't safe to come out the door directly onto steps. Barry Wood added that building codes would have to be met regarding the size of the landing. Rails would need to be installed for safety thus taking up some of the space. The exterior wall would also take up some of the space.

Barry Wood and the Darnton's asked if they could have a few moments to discuss the matter outside the room. The Board of Appeals recessed for a few minutes.

Upon returning Barry Wood explained that the wall, that will extend the living area, is approximately 3 feet behind the existing footprint. He suggested that they would like to add one (1) foot to the existing deck thus moving the stairs over creating an actual landing, no more or less, which will meet the building code and will allow them to get to ground level. Mr. Wood felt this was a compromise that everyone should be able to live with.

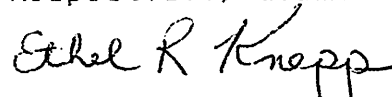
Bill Henne stated that this compromise will essentially meet the criteria of number 5 in Section 7.05 of the Zoning Ordinance.

Bill Henne made a motion to grant the variance with the condition that the construction is confined to the existing footprint of the deck with a one (1) foot maximum extension. Lloyd Kuebler seconded the motion.

Voice Vote. Ayes; All. Nays; None. Motion carried.

Meeting adjourned 8:45 p.m.

Respectfully Submitted,



Ethel R. Knepp
Clerk