

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **Richard & Patricia Viard
9495 West KL Ave.
Kalamazoo, MI 49009**

HEARING DATE: **May 1, 2012**

PROPERTY DESCRIPTION

The property located at **the North East intersection of Bay Street and Mechanics Street**, described as tax identification number 15-051-173-007-00, hereinafter referred to as the property.

APPLICATION

Describe Variance Requests: A variance from required setback of thirty-five (35) feet to allow a setback of twenty (20) feet from the Mechanics Street right-of-way. The property is located in the Waterfront Residential Zoning District. The Boyne City Zoning Ordinance requires "the side yard width to the side street shall be equal to the front yard depth requirement" on corner lots in this district.

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An affirmative vote of a majority of members shall be required to reverse any order, requirement, decision or determination of the City Manager, an administrative official of the City, or the Planning Director except that a two-thirds (2/3) majority of members shall be necessary to grant any variances from uses of land which may be permitted by this Ordinance.

BOARD DECISION AND ORDER

The Board having considered the Application, a public hearing having been held on **May 1, 2012** after giving due notice as required by law, the Board having heard the statements of the Applicant/Applicant's attorney and agents, the Board having considered letters submitted by members of the public and several comments by members of the public, the Board having considered the following Findings of Fact and Exhibits as part of the record, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The property is owned by the applicants, Richard and Patricia Viard.
2. The property is in the Waterfront Residential Zoning District (WRD).
3. The property has never been developed, and has never been reconfigured since the original plat of 1884.
4. The property is irregularly shaped, being narrower on the front (Bay Street) than at the rear.
5. The paved portion of Mechanics Street angles on its right-of-way so it is further from the front of the property than the rear.
6. The WRD requires front yard setback of thirty-five (35) feet.
7. Section 21.18 requires a corner lot to have a side yard setback along the side road equal to the front yard setback.
8. *If this lot was in the Traditional Residential District (TRD), the front yard setback would only be ten (10) feet.*
9. *Square footage of this lot is 9,670.32; minimum required in the TRD district is 5,445 square feet. On the survey the lot size is listed as .222 acres.*

FINDINGS OF FACT UNDER SECTION 27.45. – NON-USE VARIANCES

In hearing and deciding appeals for variances, the Board shall adhere to the following criteria in determining whether or not practical difficulties exist:

1. Requiring the owner to comply with the regulations governing area, setbacks, frontage, height, bulk, density or other non-use requirements would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with such regulations unnecessarily burdensome.
 - A. *Unreasonable prevention of the owner to fully use the property because it is bound by the Waterfront District restrictions, and the site is upland and not truly on the waterfront. Setback of 35 feet on two sides of the lot does prevent full reasonable use of the property and is unnecessarily burdensome.*
 - B. *The 35 foot setback from the property line will still be in place on the lake side (Bay Street)*
 - C. *Section 21.24 discusses corner visibility and nothing over 2.5 ft tall can be within a 25 foot distance from the intersection at each side, so a "triangle" area on the corner is to be kept open for visibility, which this request does not burden.*
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
 - A. *Yes, the request is the smallest variance necessary*
3. The variance can be granted in such a fashion that the spirit of the Ordinance will be observed and public safety and welfare secured.

- A. *Yes, setback as granted with the variances are still greater than in the TRD district requirements*
 - B. *The 35 foot setback from the property line will still be in place on the lake side (Bay Street)*
 - C. *Section 21.24 discusses corner visibility and nothing over 2.5 ft tall can be within a 25 foot distance from the intersection at each side, so a "triangle" area on the corner is to be kept open for visibility, which this request does not burden.*
4. The need for the variance is not self created.
- A. *The Viard's have owned the lot since 1979, prior to the current zoning ordinance requirements.*
 - B. *The configuration of the lot has not changed since it was originally platted in 1884, which pre-dates local zoning ordinance.*
5. The need for the variance is due to unique circumstances of the property itself, and not due to general conditions in the area or to circumstances related to the owner personally or to others residing on the property.
- A. *The variance is due to the unique circumstances of the property itself. Setbacks on the trapezoidal shape of the lot constricts them in their building within the front of the property.*

The Board shall grant no variance if it finds an application does not meet all of the above listed criteria for determining whether or not a practical difficulty and/or unnecessary hardship exists.

Motion: Moved by Murray, seconded by Carlile to recommend the approval of granting the variance request for a 20 ft setback on the Mechanic Street side of the property as presented and discussed through the Findings of Fact.

Roll Call

Aye: Carlile, Kubesh, McClorey, Murray and Reynolds

Nay: None

Abstain: None

Absent: None

Motion Carried.

Date: May 1, 2012



Zoning Board of Appeals Chairperson

TIME PERIOD FOR JUDICIAL REVIEW

- MCLA 125.3607 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 MCLA 125.3606 any shall be filed within 30 days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson, or within 21 days after the zoning board of appeals approves the minutes of its decision.