

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, September 5, 2017
5:00 P.M.
Boyne City Commission Chambers, City Hall

1. CALL TO ORDER AND ROLL CALL
Excuse Absences
2. APPROVAL OF MINUTES – May 2, 2017
3. HEARING CITIZENS PRESENT (on non-agenda items)
4. CORRESPONDENCE
5. NEW BUSINESS
 - A. Variance Request – 417 Bay St.
 - B. Variance Request – 816 Lower Lake Dr.
 - C. Zoning Ordinance Interpretation – Section 20.30(L)
6. OLD BUSINESS
 - A. None
7. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES
8. GOOD OF THE ORDER
9. ANNOUNCEMENTS
 - A. Next scheduled meeting: October 3, 2017
10. ADJOURNMENT



Scan QR code or go to
www.cityofboynecity.com

*click on Boards & Commissions for complete
agenda packets & minutes for each board*

*Individuals with disabilities requiring auxiliary aids or services in order to participate in municipal meetings
may contact Boyne City Hall for assistance: Cindy Grice, City Clerk/Treasurer,
319 North Lake Street, Boyne City, MI 49712; phone (231) 582-0334*

Approved: _____

**Meeting Of
May 2, 2017**

Record of the proceedings of the regular Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 364 N. Lake Street, on Tuesday, May 2, 2017 at 5:00 p.m.

Call To Order

Chair Kubesh called the meeting to order at 5:00 p.m.

**Roll Call
Excuse Absence**

Present: Bob Carlile, Pat Kubesh, Lynn Murray and Roger Reynolds
Absent: John McClorey

MOTION

ZBA 2017-05-02-1
Murray moved, Reynolds seconded, PASSED UNANIMOUSLY, a motion to excuse the absence of McClorey

Meeting Attendance

City Officials/Staff: Assistant Planning and Zoning Administrator Patrick Kilkenny and Recording Secretary Pat Haver
Public Present: None

**Approval of the Minutes
MOTION**

ZBA 2017-05-02-2
Murray moved, Kubesh seconded, PASSED UNANIMOUSLY, a motion to approve the May 3, 2016 minutes as presented.

Hearing Citizens Present

None

Correspondence(s)

None

New Business

**Kubesh, Reynolds and
Carlile term expirations
In September
MOTION**

ZBA 2017-05-02 5A
The term of Pat Kubesh and Roger Reynolds expired on September 1, 2016, and the term of Bob Carlile is due to expire on September 1, 2017. All three have indicated they are willing to serve another three year term. After board discussion, **motion by Murray, seconded by Reynolds, PASSED UNANIMOUSLY**, to recommend to the City Commission the reappointment of Pat Kubesh and Roger Reynolds to a three year term on the Zoning Board of Appeals to expire on September 1, 2019 and reappointment of Bob Carlile to a three year term on the Zoning Board of Appeals to expire on September 1, 2020.

**Election of Officers
MOTION**

ZBA 2017-05-02-5B
Motion by Murray, seconded by Reynolds, PASSED UNANIMOUSLY, to leave the slate of officers as they currently are, with Pat Kubesh as Chair and Bob Carlile as Vice Chair of the Zoning Board of Appeals.

**Approval of 2017
Meeting Calendar
MOTION**

ZBA 2017-05-02-5C
Included in the agenda packet is the 2017 meeting calendar for your review and consideration. **Motion by Kubesh, seconded by Murray, PASSED UNANIMOUSLY**, to adopt the 2017 calendar as presented, meetings to be held the 1st Tuesday of each month at 5:00 pm.

**Old Business and
Reports of Officers, Boards
and Standing Committees**

None

Good of the Order

Lynn Murray advised the board that he had placed his name for consideration of appointment to the Planning Commission to fill the vacancy when Jane MacKenzie stepped down; he asked the board if they felt that there were any concerns or problems, Kubesh indicated that he had served on both the ZBA and PC for several years and felt that it was advantageous to have a person serve on both boards.

Announcements

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for June 6, 2017 at 5:00 p.m.

**Adjournment
MOTION**

ZBA 2017-05-02-10

Murray moved, Kubesh seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, May 2, 2017 Boyne City Zoning Board of Appeals meeting at 5:07 p.m.

Patrick Kubesh, Chair

Pat Haver, Recording Secretary

DRAFT

CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members
From: Patrick Kilkenny, Assistant Planning Director
Date: September 5, 2017
Subject: Variance Request at 417 Bay St.



Background

The subject parcel is located at 417 Bay St. Boyne City, MI 49712. The property is owned by DJP Holdings LLC and located in the Waterfront Residential District (WRD).

Property Description: 15-051-171-005-00

PT OF BLK 1 OF WM T ADDIS ADD TO SPRING HARBOR BEG AT A PT ON S SIDE OF BAY ST WHICH WOULD BE INT BY W LI OF ROBINSON ST IF EXT S TH S AL SD EXT W LI OF ROB- INSON ST TO SH OF LK CX TH WLY AL SH TO A PT SD SH 100FT MEAS PERP FROM W LI OF ROBINSON ST IF EXT TH N PARA WI EXT LI OF ROBINSON ST & 100 FT WLY TO S SI BAY ST TH AL S SI BAY ST TO POB

The parcel is approximately 8,680 sq. ft. in size and includes a single family residence and accessory building. The property is bounded by Bay Street (public road) to the north. Adjacent properties to the north, east, and west are zoned WRD. Parcels adjacent to the subject property to the north, east, and west are privately owned.

Discussion

The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 21.36 – Accessory Buildings and Structures, A. General Standards (3). *“Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.”*

The variance request is for the removal and replacement of an existing nonconforming deck attached to the south side of the residence. The deck is approximately 1,070 sq. ft. and extends to the existing sea wall as shown on the attached photos and survey. The request includes rebuilding the deck in its existing footprint.

Other factors

The topography of the property is steep on the northern half of the property sloping from north to south, and gradually sloping on the southern half, with a steep drop near the lakeshore. The majority of the existing deck is nonconforming due to its

encroachment into the 35' waterfront setback (35' upland from the high water elevation as defined (582.4')).

A variance request for the property dated December 3, 1992 and the associated meeting minutes are included for your review. The proposed project from Town and Country homes included in the 1992 ZBA application was approved but never completed.

Summary

The applicant is requesting a variance for the removal and replacement of an existing nonconforming deck attached to the south side of the residence. The request states that the deck's footprint is not proposed to be expanded or enlarged from its current dimensions.

The ZBA should review the enclosed information, visit the property, and apply the standards in the City of Boyne City Zoning Ordinance.

Public Comment:

Letter of support from Haggard's Plumbing and Heating (attached)

Please find enclosed in this packet the following exhibits:

- A. Zoning Board of Appeals Application with site photos
- B. Area Map of Subject Property
- C. Layout Map of Subject Property
- D. Section 21.36 and Article 26 of the Boyne City Zoning Ordinance
- E. December 3, 1992 Zoning Board of Appeals minutes and variance application
- F. Findings of Fact



City of Boyne City

319 N. Lake Street
Boyne City, MI 49712-1188
231-582-0343

www.boyne-city.com

No Faxed Copies/Originals only

ZONING BOARD OF APPEALS APPLICATION

Owner Name: DJP Holdings LLC Pamela Mrstik Manning
Address: 18273 BLUE HERON POINTE DRIVE
NORTHVILLE MI 48168
Phone: 248-761-7429 E-mail: PTTMAMANNING@MSN.COM

Describe Variance Request: remove and replace non-conforming deck

Property Street Address: 417 BAY ST. BOYNE CITY, MI 49712
Nearest Intersection: BAY ST & MECHANIC ST
Property Tax ID #: 051-171-DDS-DD Zoning District: Boyne city
Legal Description of Property (attach separate sheet if necessary): see attached sheet

Please attach:

- Proposed building/construction with dimensions and front, side and rear yard setbacks
- Existing buildings/structures including decks, driveways, storage buildings, etc.
- Lot lines and dimensions and layout, including parking/loading areas
- Photos, prints, maps, graphics, or drawings of current site
- Copy of Soil Erosion permit application or MDNR permit application, if applicable
- Letter of approval from association's Aesthetic Review Committee, if applicable
- Well and/or septic permit or copy of approved City sewer/water application, if applicable
- Pertinent topographic features (steep slopes, trees, water, etc.)
- Road names, lakeshores, streams, easements, or other dedicated rights-of-way abutting the property
- Any other information you feel is necessary to present your case

Note: I understand and agree to abide by all provisions of the Boyne City Zoning Ordinance as well as all procedures and policies of the Boyne City Zoning Board of Appeals as those provisions, procedures, and policies relate to the handling and disposition of this application; that the above information is true and accurate to the best of my knowledge; and that a filing fee is due with this application. I understand that if the requested variance is granted, I am in no way relieved from all other applicable requirements. I grant permission to the Zoning Administrator and other City Officials to enter the property and make such investigations and tests as they deem necessary.

Owner's Signature Pamela F. Manning Date 8-11-17

This is to certify the required filing fee was received on 8/11/17 and documented with receipt number 89282. This application is scheduled for public hearing on 9/5/17.
Staff Initials PK

LOCAL PROPERTY TAXES 2017 Summer

CITY OF BOYNE CITY
319 N LAKE STREET
BOYNE CITY, MI 49712

15051-171-005-00
BJP HOLDINGS LLC
21985 PICADILLY CIRCLE
NOVI MI 48375

TOTAL TAXES DUE IF PAID	\$4,962.02
NO LATER THAN: 09/14/2017	
After due date, additional fees will be added. Please contact your local treasurer for the total amount due.	
Check must clear or receipt is void.	
Local treasurer cannot accept tax payments for Real Property after 2/28. Delinquent Personal Property taxes are payable to the Local Treasurer.	

TAXPAYER NOTE: Please notify us if name or address information is not correct. If additional information is needed to make the change, you will be contacted.



08/11/17
08/11/17

RETURN THE TOP PORTION WITH PAYMENT

LOCAL PROPERTY TAXES
2017 Summer

RECEIPT AVAILABLE ON REQUEST

08/11/17
08/11/17

PARCEL NUMBER:	15051-171-005-00	STATE EQUALIZED VALUE:	204,300
PROPERTY ADDRESS:	417 BAY ST	TAXABLE VALUE:	126,524
PROPERTY TYPE:	RESIDENTIAL - IMPROVED	PRINCIPAL RESIDENCE EXEMPTION %:	0.0000
CLASS CODE:	401		
SCHOOL:	15020 BOYNE CITY		

	TAXING AUTHORITY	TAX RATE	TAX AMOUNT
Assessment & Tax Information online at: www.charlevoixcounty.org Legal Description: PT OF BLK 1 OF WM T ADDIS ADD TO SPRING HARBOR BEG AT A PT ON S SIDE OF BAY ST WHICH WOULD BE INT BY W LI OF ROBINSON ST IF EXT S TH S AL SD EXT W LI OF ROB- INSON ST TO SH CE L CX TH WLY AL SH TO A PT SD SH 100FT WEAS PERP FROM W LI OF ROBINSON ST IF EXT TH N PARA WI EXT LI OF ROBINSON ST & 100 FT WLY TO S SI BAY ST TH AL S SI BAY ST TO POB. COMPLETE LEGAL DESCRIPTION ON FILE BOYNE CITY TREASURER:(231)-582-6597 ONLINE PAYMENTS: WWW.CITYOFBOYNECITY.COM JULY 1- SEPT 14: TAX & 1% ADMIN FEE DUE SEPT 15: ADDITIONAL 4% PENALTY IS ADDED. STARTING OCT 15 INTEREST ADDED AT 1/2% PER MONTH. ON MARCH 1, 2018 UNPAID REAL PROPERTY TAXES BECOME DELINQUENT. PLEASE CALL COUNTY TREASURER @ 1-800-548-9157 FOR AMOUNT DUE	STATE EDUCATION	6.00000	759.14
	COUNTY ALLOCATED	4.45000	563.03
	BC SCH OP	9.00000	1,138.71
	BC SCH DEBT 11	1.15000	145.50
	BC SCH DEBT 16	0.42000	53.14
	CITY OPERATING	15.51000	1,962.38
	VOTED CITY FACIL	2.30000	291.00
	TAX & SPECIAL ASSESSMENTS		4,912.90
	ADMINISTRATION FEE		49.12
	TOTAL TAX DUE BY: 09/14/17		4,962.02

FISCAL YEARS	
County:	10/01 - 9/30
Town/City:	5/1 - 04/30
School:	7/1 - 6/30
State:	10/1 - 9/30

TREASURER NOT RESPONSIBLE FOR
PAYMENT ON WRONG PARCEL

MAKE CHECK PAYABLE TO:
CITY OF BOYNE CITY
319 N LAKE STREET
BOYNE CITY, MI 49712

Patrick Kilkenny

From: pam manning <pttmamanning@msn.com>
Sent: Thursday, August 17, 2017 10:52 AM
To: Patrick Kilkenny
Subject: Variance Letter

August 17, 2017

Pamela Mrstik Manning

18273 Blue Heron Pointe Drive

Northville, MI 48168

pttmamanning@msn.com

City of Boyne City

319 North Lake Street

Boyne City, MI 49712

Dear Zoning Board of Appeals:

We, the current owners of 417 Bay Street, are requesting a variance to permit the restoration of an existing non-conforming deck at this address.

To the best of our knowledge, the home was built in the 1930's with an addition constructed in the 1960's. The exterior deck was added in the early 1970's.

This deck has fallen into a state of disrepair, and we have concerns that it has become a safety hazard.

Due to the location of the home on the property and the topography of the lot on which these structures reside, we require a variance to permit restoration of the existing deck.

Please consider that we are requesting permission to repair/replace the deck without materially changing its current footprint.

Sincerely,

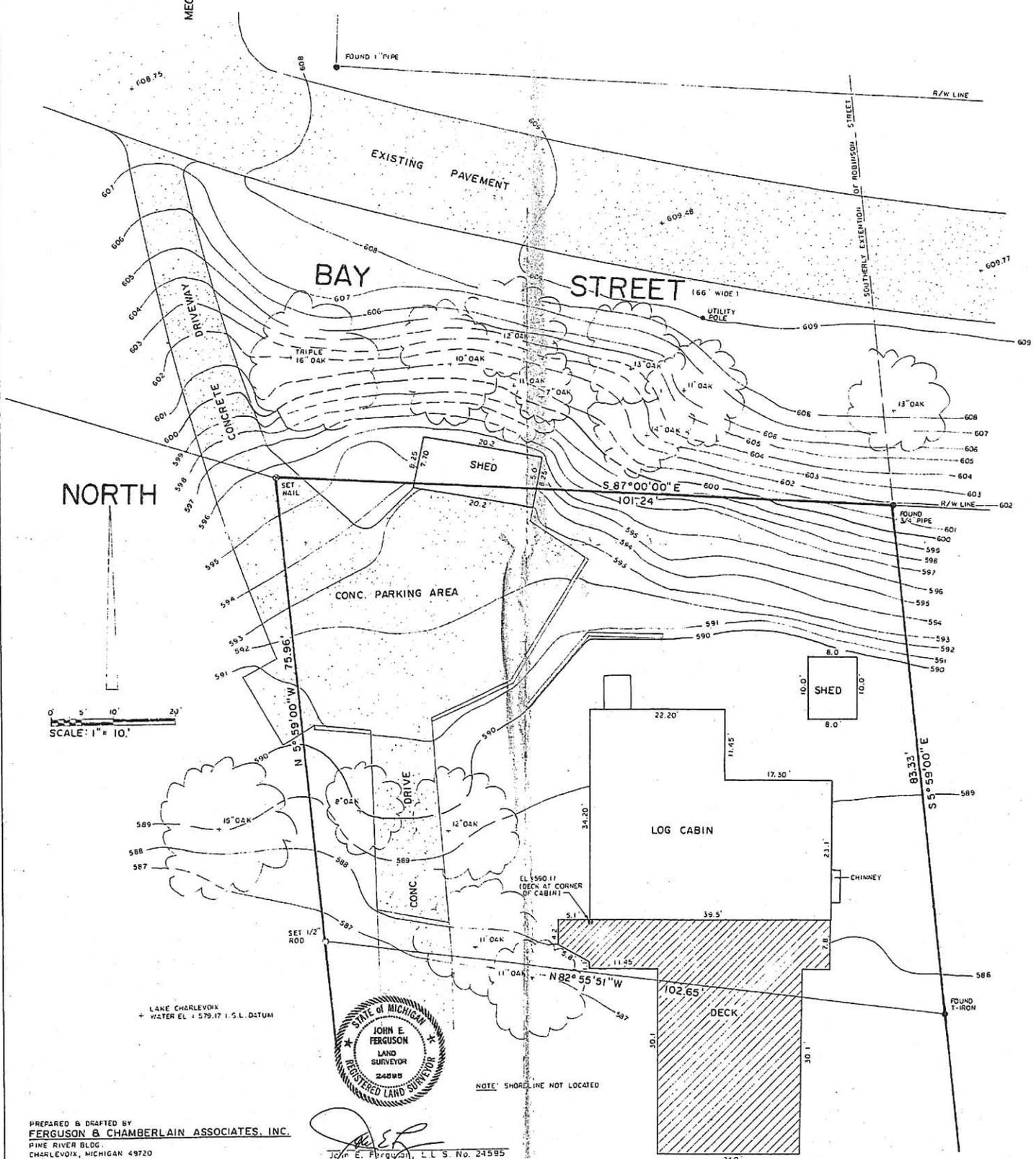
Pamela Mrstik Manning

TOPOGRAPHICAL SURVEY

FOR: LLOYD MRSTIK
P.O. BOX 367
BOYNE CITY, MICHIGAN 49712

DATE: SEPT. 3, 1992

PART OF BLOCK 1, WM. T. ADDIS' ADDITION TO SPRING HARBOR (CITY OF BOYNE CITY)



NORTH

SCALE: 1" = 10'



John E. Ferguson, L.L.S. No. 24595
9-3-92

LAKE CHARLEVOIX
EL: 579.17, I.G.L.D. ON 8-27-92

PREPARED & DRAFTED BY
FERGUSON & CHAMBERLAIN ASSOCIATES, INC.
PINE RIVER BLDG.
CHARLEVOIX, MICHIGAN 49720
(616) 547-6882









CITY OF BOYNE CITY
ZONING BOARD OF APPEALS

PUBLIC NOTICE

Notice is hereby given that, pursuant to rules and regulations as outlined in the Boyne City Zoning Ordinance Section 27.20, **a public hearing will be held by the Boyne City Zoning Board of Appeals on Tuesday, September 5, 2017 at 5:00 p.m.** in the City Commission Chambers at 319 N. Lake Street, Boyne City, MI, to review and consider the following:

1. A variance request from Pamela Mrstik Manning for parcel numbers 15-051-171-005-00 at 417 Bay Street, Boyne City, MI 49712. The applicant is requesting a variance from Section 21.36 – Accessory buildings and structures that where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main buildings.
2. A variance request from Sharon Kemp for parcel numbers 15-051-144-003-00 at 816 Lower Lake Drive, Boyne City, MI 49712. The applicant is requesting a variance from Section 21.36 – Accessory buildings and structures that where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main buildings.

More details on these variance requests are available for review at the Boyne City Planning Department, Monday through Friday, 7:30 a.m. through 4:30 p.m. All interested persons are encouraged to attend the public hearing and participate in the discussion. Any written input in regards to the requests may be submitted to the City Planner's office until 5:00 p.m. on the day of the public hearing or at the public hearing. For further information visit the City Planner's office at 319 N. Lake Street, Boyne City, MI 49712, or call (231) 582-0337 or e-mail pkilkenny@boynecity.com

Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

Date: August 22, 2017

To: Boyne City Planning Department
319 N. Lake St.
Boyne City, MI 49712

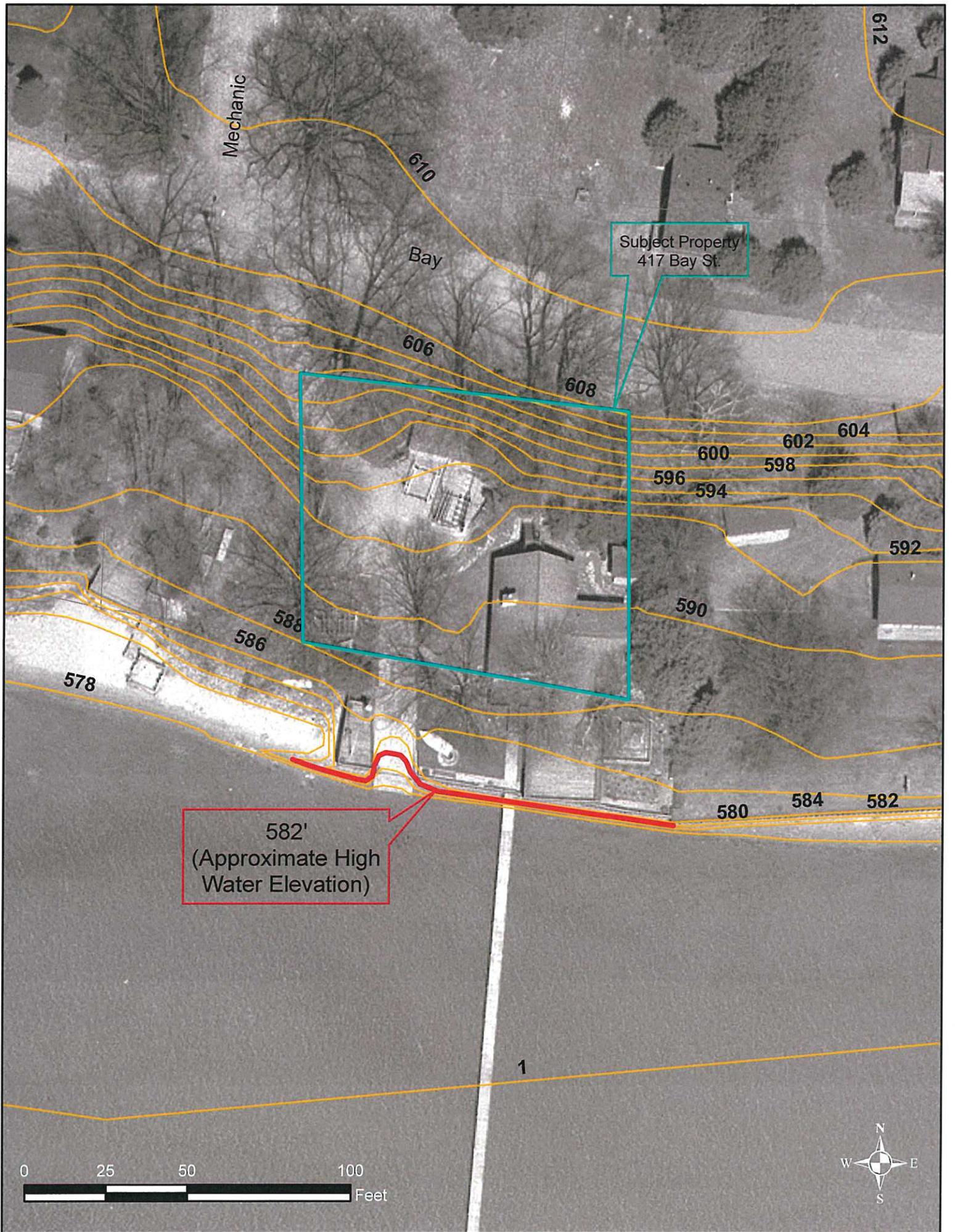
RE: Variance Request from Pamela Mrstik Manning at 417 Bay Street, Boyne City, MI 49712
Parcel#15-051-171-005-020

To Whom it May Concern,

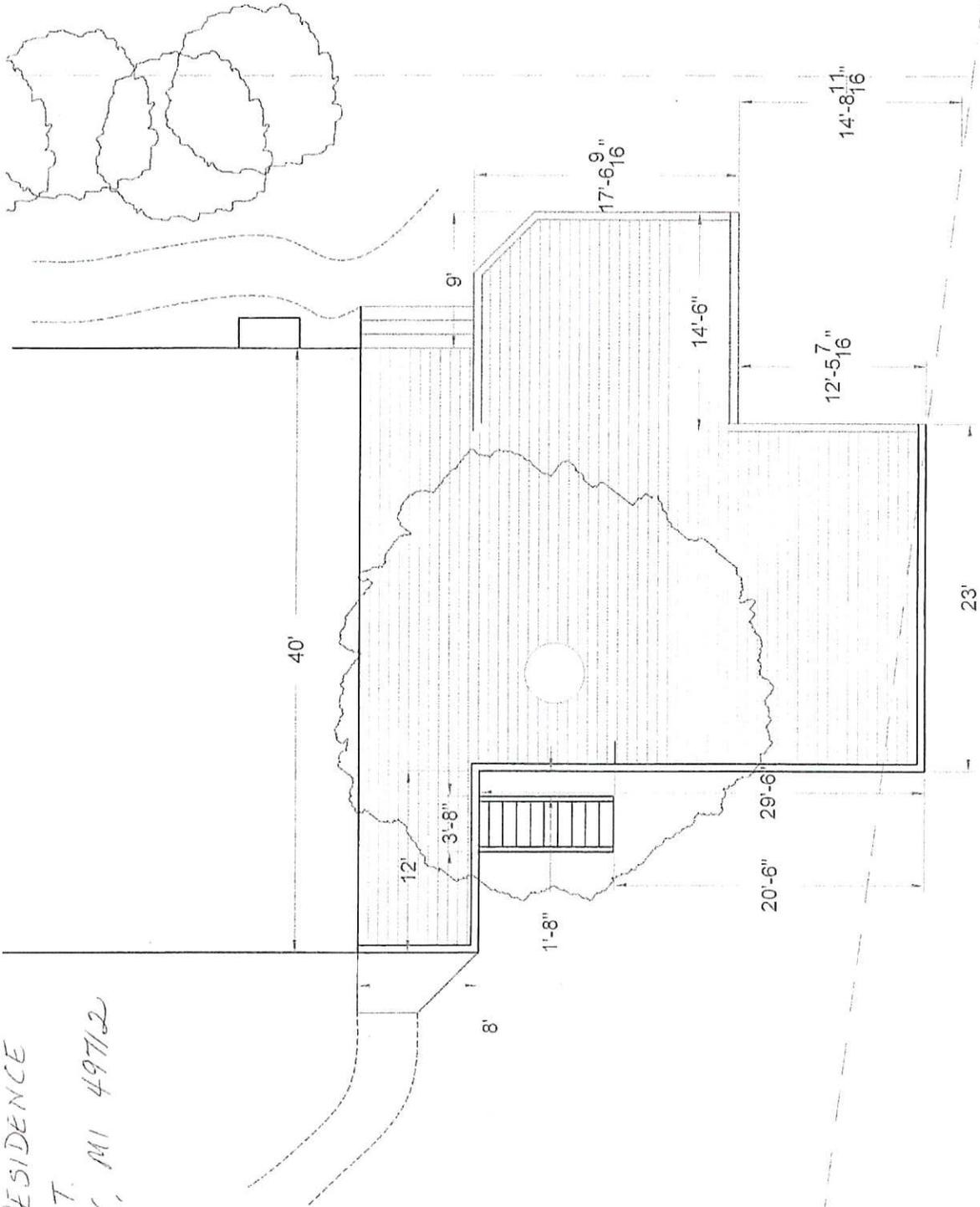
Upon reviewing the above Notice of Public Hearing of the Zoning Board of Appeals, I would like to express my view with the above case's requests. We at Haggard's Plumbing & Heating are not at all opposed to the changes of the property and/or the request to the Zoning Board. If a property owner is fortunate enough to have the ability and the resources in this time of economical struggles to either build and/or improve their existing property, we would like to see their request granted. It would prove positive for the local, county, state and country to do all we can to improve and promote growth in any way possible.

Sincerely,

Haggard's Plumbing & Heating



VIRSTIK RESIDENCE
417 BAY ST.
BOYNE CITY, MI 49712



The finished sides of fences in the rear or side yard may face towards or away from the property on which they are placed. If a fence exists in the rear or side yard of an adjacent lot, only one (1) other fence may be placed along the adjoining boundaries of such adjacent lot. Areas between abutting fences must be maintained in accordance with this Ordinance and the City=s Code of Ordinances.

No fence, wall or screen shall be erected within any public right-of-way.

The use of electric current or charge on any fence or part thereof is prohibited. Electronic fences buried beneath the ground are not regulated by this Section.

- B. Trees, Shrubs, Flowers or Plants. Trees, shrubs, flowers or plants shall be permitted in any front, side or rear yard, provided it does not violate the corner setbacks as set forth in this Section.
- C. Other Specified Structures. Walls, driveways, curbs, retaining walls, mailboxes, name plates, lamp posts, bird baths and structures of a like nature shall be permitted in any front, side or rear yard.
- D. Swimming Pools, Private. Private pools shall be completely surrounded by a fence of not less than four (4) feet. Above ground swimming pools need not be fenced if their side walls are at least four (4) feet in height, or when a fence is secured on top of the side pool walls to a minimum of four (4) feet in height as measure from ground level. All swimming pool fences or walls shall be constructed as to have no openings larger than four (4) inches in dimension, except for doors and gates. All doors and gates shall be self-latching and self-closing.

Section 21.30 Rubbish and Waste Material.

It shall be unlawful throughout the city to openly store, collect or place garbage, discarded building materials, refuse, junk, inoperable and unlicensed motor vehicles, or other similar materials, except upon land owned and operated as a State approved solid waste site.

Section 21.32 Grades.

No premises shall be filled or grades established so as to discharge the surface runoff on abutting property in such a manner that will cause inconvenience or damage to adjacent properties.

Section 21.34 Access Through Yards.

Access drives may be placed in the required front or side yards so as to provide access to a rear yard. Further, any walk, terrace or other pavement serving a like function shall be permitted in any required yard.

Section 21.36 Accessory Buildings And Structures.

Accessory buildings and structures, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:



A. General Standards. (amended: September 29, 2011)

1. Accessory buildings, structures and uses are permitted only in connection with, incidental to and on the same lot with a principal building, structure or use. An accessory building, structure or use must be in the same zoning district as the principal building, structure or use on a lot.
2. No accessory building, structure or use shall be occupied or utilized unless the principal structure is occupied or utilized. No accessory building, structure or use may be placed on a lot without a principal building, structure or use.
3. Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this Ordinance applicable to main or principal buildings.
4. An accessory building shall not exceed twenty (20) feet in height and may occupy not more than the ground floor area of the principal building.
5. In any residential district, accessory buildings shall not be erected closer to the side lot line than the required setback distance for the dwelling, unless the accessory building is completely to the rear of the dwelling, in which event the accessory building may be erected three (3) feet from any side or rear lot line
6. In the case of double frontage lots or corner lots, accessory buildings shall observe front setback requirements on all street frontages.
7. No accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds (2/3) completed.

B. Garages. In any residential district, no garage shall be erected closer to the side lot line than the permitted distance for the dwelling, unless the garage is completely to the rear of the dwelling, in which event the garage may be erected three (3) feet from any interior side lot line. No garage or portion thereof shall extend into the required front yard area. Attached garages of fireproof construction may be erected to extend beyond the front line of the house in those areas which are being developed according to a common plan that includes the construction of attached garages extending beyond the front line of the house, provided that such garages shall not encroach in or upon the minimum front yard area as required by this Ordinance.

No garage, utility building or accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds (2/3) completed.

C. Mechanical Equipment. Mechanical equipment, such as blowers, ventilating fans and air conditioning units, shall be placed not closer than three (3) feet to any lot line in any business district, and not closer than twelve (12) feet to any lot line in all other districts.



D. Flagpoles. Flagpoles in single-family residential districts shall be not exceed forty (40) feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Flagpoles in other than single-family residential districts shall not exceed one-hundred (100) feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Section 21.38 Accessory Uses And Buildings in Business And Industrial Districts.

In business and industrial districts, accessory buildings and uses may occupy any of the ground area which the principal buildings is permitted to cover. Accessory buildings such as buildings for parking attendant, guard shelters, gate houses and transformer buildings may be located in the front or side yard of industrial districts.

Section 21.40 Zoning Permits Issued Prior to Effective Date.

Any building or structure for which a zoning permit has been issued and the construction of the whole or a part of which has been entered into pursuant to a building permit issued prior to the effective date of this Ordinance may be completed and used in accordance with the plans and applications on which said building permit was granted.

A building which is lawfully under construction at the time of adoption of this Ordinance shall be allowed to be completed within one (1) year of the passage of this Ordinance. Adoption of this Ordinance shall not require any changes to the plans, construction or designated use of any such buildings.

Section 21.42 Restoration of Unsafe Buildings.

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Planning Director, or required compliance with his or her lawful order.

ARTICLE XXVI NONCONFORMING USES, LOTS AND STRUCTURES

Section 26.05 Purpose

It is the intent of this Article to permit legal nonconforming lots, structures or uses to continue until they are removed or abandoned, but not to encourage their survival. However, this general statement of intent is subject to reasonable application in practice, and, in appropriate circumstances to authorize resumption, restoration, reconstruction, extension, or substitution of nonconforming uses as legal conditional uses after proper notification and review.

The City of Boyne City has been a functioning community of residences and businesses for more than 100 years, and during that period, business and residential uses have existed side by side. It is unrealistic to expect that the owner of a pre-existing business located in an area zoned for residential uses will be willing to voluntarily discontinue the operation of the business when to do so will result in serious financial loss to the owner of the property.

Accordingly, realistic application of rules applicable to pre-existing nonconforming uses and structures requires consideration of the reasonable choices facing the community.

- A. The State Zoning Enabling Act which sets forth the requirements for a local zoning ordinance requires that the ordinance provide that the lawful use of land or a structure exactly as the land or structure existed at the time of enactment of the ordinance may be continued, although that use or structure does not conform with the ordinance (MCL 125.583 a.)
- B. The State Zoning Enabling Act also authorizes the local zoning ordinance to provide for the resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the ordinance.
- C. The State Zoning Enabling Act authorizes the local zoning ordinance to provide for special land uses which shall be permitted in a zoning district after review and approval by the Planning Commission provided that the ordinance specify those special land uses and activities eligible for approval consideration, the requirements and standards upon which decisions for special land uses shall be based and the procedures and supporting materials required for application, review and approval. The words A special land uses ≅ as used in the Enabling Statute are equivalent to the words A conditional uses ≅ as used in the Boyne City Zoning Ordinance. (MCL 125.584.a)
- D. It is recognized that some pre-existing nonconforming uses or structures, while not in conformance with the requirements of the zoning district in which located, are not detrimental to the neighborhood where the activity or structure has been in use for many years and long accepted. An extension or expansion of such uses may, in some cases, not be detrimental to the neighborhood.

- E. It is recognized that the continuation of a pre-existing nonconforming use as it presently exists may be quite detrimental to the neighborhood, but could be voluntarily changed to some other use by the property owner which, although not a use allowable in the zoning district, would be considerably less offensive than the present use; and, therefore, a desirable goal for improvement of the community.

Accordingly, it is the expressed intent of this ordinance to authorize wide latitude to the Boyne City Planning Commission to aid in reviewing and resolving problems associated with nonconforming uses and structures and to grant to the Planning Commission discretionary authority to provide for the reasonable resumption, restoration, reconstruction, extension or substitution of nonconforming uses or structures as legal conditional uses when the requirements and standards set forth hereafter are satisfied.

Section 26.10 Declaration and Regulation.

Any lot or lawful use of land or a structure existing on the passage date of this Zoning Ordinance, or on the passage date of any future amendments which may be made to this Zoning Ordinance, and located in a district in which it would not be permitted, or prohibited, regulated, restricted, or otherwise unlawful as a new use or otherwise under the regulations of this Zoning Ordinance is declared to be a nonconforming lot, use, or structure and not in violation of this Zoning Ordinance. However, a nonconforming use shall be subject to, and the owner shall comply with, the regulations in this Zoning Ordinance.

It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. Such nonconforming uses and structures are declared by this chapter to be incompatible with permitted uses in the districts involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are considered to present a greater public burden than nonconforming lots and structures, therefore the intent of this Ordinance to gradually eliminate nonconforming uses or decrease their nonconforming status, but to permit certain nonconforming structures to continue under certain conditions, discouraging their expansion or enlargement. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Article shall be deemed to require a change in the plans, construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this chapter, and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner except that where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the structure involved.

Section 26.15 Nonconforming Uses of Land.

Where, on the passage date of this Zoning Ordinance, or on the passage date of any future amendments which may be made to this Zoning Ordinance, a lawful use of land exists, which uses would not be permitted or prohibited, regulated, restricted, or otherwise unlawful by the regulations imposed by this Zoning Ordinance, the use may be continued so long as it remains otherwise lawful provided:

- A. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance.
- B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that portion occupied by such use on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance.
- C. If any such nonconforming use of land ceases for any reason for a period of more than one (1) year, such land shall conform to the regulations specified by this Zoning Ordinance for the district in which such land is located.
- D. Those alleged nonconforming uses which cannot be proved to have been legally existing prior to the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance, shall be declared illegal nonconforming uses and shall be discontinued following such effective date.
- E. No additional structure not conforming to this Zoning Ordinance shall be erected in connection with such nonconforming use of land.

Section 26.20 Nonconforming Uses of Structures.

If a lawful use involving an individual structure, or a structure and premises in combination, exists on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance, which use would not be allowed in the district in which it is located under this Zoning Ordinance, the lawful use may be continued so long as it remains otherwise, lawful, subject to the following:

- A. No existing structure devoted to a use not permitted by this Zoning Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- B. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged, designed, or designated for such use at the time of adoption of this Zoning Ordinance, or at the time of adoption of any future amendments which may be made to this Zoning Ordinance, but no such use shall be extended to occupy any land outside such building.

- C. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use, provided the Planning Commission determines that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. Whenever a nonconforming use has been changed to a conforming use, or to a use permitted in a district of greater restrictions, it shall not thereafter be changed to a nonconforming use.
- D. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
- E. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or ceases for one (1) year, or for a total of twelve (12) months during any two (2) year period, the structure, or structure and premises in combination, shall not thereafter be used, except in conformance with the regulations of the zoning district in which it is located. Structures occupied by seasonal uses shall be excepted from this provision.
- F. Where a nonconforming use status applies to a structure and premises in combination, the removal or destruction of the entire structure, shall eliminate the nonconforming status of the land.

Section 26.25 Nonconforming Structures.

Where a lawful structure exists on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance, which structure could not be built under this Zoning Ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Should such structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased.
- B. If such structure is moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- C. If any such nonconforming structure ceases being used for any reason for a period of more than one (1) year, any subsequent use of such structure shall conform to the regulations specified in this Zoning Ordinance for the district in which such structure is located.
- D. Should such structure be destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this article.

- E. A residential nonconforming structure may be allowed to expand provided the expansion does not increase the size of the established footprint, or the expansion is within a yard which retains compliance with the required setback and height (e.g. a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming). Provided further that the following criteria are met for the subject structure:
1. The cost of such work shall not exceed fifty percent (50%) of the market value of such residential structure prior to the time such work is started.
 2. The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage.
 3. Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.

Section 26.30 Nonconforming Lots of Record.

- A. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Zoning Ordinance, a single family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of this Zoning Ordinance, provided such lot is located in a block on which fifty-one percent (51%) or more of the lots on both sides of the street are occupied by single-family dwellings. Where fifty-one percent (51%) or more of the existing homes are built upon a larger lot or combination of lots, a building permit will not be granted for a lot of less area or width than the size of the lots of the majority of the dwellings existing on the passage date of this Zoning Ordinance.
- B. In those areas where less than fifty-one percent (51%) of the lots are built upon in a one (1) block area, the provisions regarding the use of combined lots shall apply.
- C. Permission to use a single nonconforming lot as provided in this section shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. However, yard dimensions and other requirements, not involving lot area or lot width, or both, shall conform to the regulations for the district in which the lot is located.
- D. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record on the passage date of this Zoning Ordinance, and if all or part of the lots does not meet the requirements for lot width and area as established by this Zoning Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Zoning Ordinance. No portion of such parcel shall be used or occupied, which portion does not meet lot width and area requirements established by this Zoning Ordinance, nor shall any division of the parcel be made which leaves remaining any lot width or area below the requirements stated in this Zoning Ordinance.

Section 26.35 Restoration and Repair

- A. On any nonconforming structure, or on any portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding twenty-five percent (25%) of the current state equalized valuation of the nonconforming structure or portion thereof, as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.
- B. If a nonconforming structure, or a portion of a structure containing a nonconforming use, becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by the City to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

Section 26.40 Restoration of Damaged Buildings.

Nothing in this Zoning Ordinance shall prevent the reconstruction, repair, restoration and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, acts of God or acts of public enemy, subsequent to the effective date of this Zoning Ordinance, wherein the expense of such reconstruction does not exceed thirty percent (30%) of the State equalized valuation of the entire building or structure at the time such damage occurred, provided that all of the following apply:

- A. Such valuation shall be subject to the approval of the Planning Commission.
- B. Such restoration and resumption shall take place within six (6) months of the time of such damage and it shall be completed within one (1) year from the time of such damage.
- C. Such use shall be identical to the nonconforming use permitted and in effect directly preceding such damage.

Where pending insurance claims require an extension of time, the Planning Commission may grant a time extension, provided that the property owner submits a certification from the insurance company attesting to the delay. Until such time as the debris from the fire damage is fully removed, the premises shall be adequately fenced or screened from access by children who may be attracted to the premises. No fee shall be charged for an appeal under this section.

Section 26.45 Change of Nonconforming Use

Whenever a zoning district shall be changed, any then existing nonconforming use in such changed district may be continued, provided all other regulations governing the use are complied with. Whenever a nonconforming use of a building or premises has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

Section 26.50 Nonconforming Use Discontinued

In the event any nonconforming use is discontinued for a period of one (1) year, it shall be presumed that the owner thereof intends to abandon the right to continue or resume the same and any subsequent use shall conform to the uses permitted in the district in which the premises are located.

The owner of the property upon which the nonconforming use is located shall be entitled to submit proof of intent to the Planning Commission to continue the use to rebut the presumption of abandonment; however, the burden of such proof shall rest upon the property owner. If the Planning Commission determines that the owner did not intend to abandon the right of continuation of the nonconforming use, the owner shall be entitled to resume the use previously made.

Section 26.55 Continuation of Uses.

When a nonconforming use of property is discontinued through vacancy, lack of operation or other similar conditions for a period of one (1) year or more, thereafter no right shall exist to maintain on such property a nonconforming use unless the Zoning Board of Appeals grants such privilege within six (6) months after such discontinuance. No nonconforming use, if changed to a use permitted in the district in which it is located, shall be resumed or changed back to a nonconforming use.

Section 26.60 Change of Use.

The use of a nonconforming building or structure may be changed to another more restrictive use. Where the use of a nonconforming building or structure is hereafter changed to a more restrictive use, it shall not thereafter be changed to a use which is less restrictive.

Section 26.65 Extensions; Enlargements; Moving.

No nonconforming use of any land or structure shall hereafter be enlarged or extended. No nonconforming building or structure shall be moved in whole or in part to another location unless such building or structure and the off-street parking spaces, yards and other open spaces provided are made to conform to all the regulations of the district in which such building or structure is to be located.

Section 26.70 Change of Tenancy or Ownership.

There may be a change in tenancy, ownership or management of an existing nonconforming use, provided there is no change in the nature or character of such nonconforming use.

Section 26.75 Acquisition of Nonconformities; Removal and Resale.

- A. The Planning Commission may, from time to time, recommend to the City Commission the acquisition of private property or an interest in private property that does not conform in use or structure to the regulations and restrictions of the various districts defined in this Zoning Ordinance, and may recommend the removal of such use or structure.
- B. Whenever the City Commission has under advisement the acquisition by purchase, condemnation or otherwise, as provided by law, of any nonconforming building, structure or use, a preliminary public hearing thereon shall be held before the City Commission. Not less than fifteen (15) days before the hearing, a notice of the time, place and purpose of such public hearing shall be published in a paper circulating in the City, and the City Clerk shall send by mail, addressed to the owner of any such property at the address given in the last assessment roll, a written notice of the time, place and purpose of such hearing. If the cost and expense, or any portion thereof, is to be assessed to a special district, the City Clerk shall be directed to furnish the City Commission with a tentative special assessment district, the tentative plan of assessment, the names of the respective owners of the property in such district and the addresses of such owners as given in the last assessment roll. The City Clerk shall also send the notice to the respective owners in the tentative assessment district.
- C. Whenever the City Commission, after a public hearing as required in subsection (C) hereof, declares, by resolution, that proceedings be instituted for the acquisition of any property on which is located a nonconforming building, structure or use in accordance with the laws of the State, the City Charter, this Zoning Ordinance and other applicable ordinances of the City, the City Clerk shall send, by registered mail, a certified copy of such resolution to the respective owners of the properties in any special assessment district, at the addresses given in the last assessment roll.
- D. Upon the passing of title to the private property so acquired, as provided in subsection (D) hereof, to the City, the City Commission shall cause the discontinuance or removal of the nonconforming use or the removal, demolition or remodeling of the nonconforming structure. The City Commission shall thereafter order such property sold or otherwise disposed of, but only for a conforming use. The City Commission shall confirm the cost and expense of such project and report any less cost to the County Equalization Department. The City Clerk shall then prepare an assessment roll in the manner provided for in the City Charter, these Codified Ordinances and other applicable ordinances of the City. Such assessment roll may, in the discretion of the City Commission, be in one (1) or more, but not more than five (5), annual installments.

Section 26.80 Certificates of Occupancy; Records.

- A. If, at any time after the adoption of this Zoning Ordinance, the City becomes aware of a nonconforming use, the owner of such nonconforming use shall be notified by the Planning Director of the provisions of this section and that his or her property constitutes a nonconforming use. Within thirty (30) days after receipt of such notice, the owner shall apply for and be issued a certificate of occupancy by the City for the nonconforming use. The application for such certificate shall designate the location, nature and extent of the

nonconforming use and such other details as may be necessary for the issuance of the certificate of occupancy.

- B. If the owner of a nonconforming use fails to apply for a certificate of occupancy within thirty (30) days after receipt of such notice, the use ceases to be nonconforming and is declared to be in violation of this Zoning Ordinance. The City Clerk and the City Attorney shall take appropriate action to enjoin such violation.
- C. If the City finds, upon reviewing the application for a certificate of occupancy, that the existing use is illegal or in violation of any other ordinance or law, or if he or she finds that the building for which the certificate is requested has been constructed or altered for the existing use or any other use without full compliance with the Building Ordinance or Zoning Ordinance in effect at the time of construction or alteration, he or she shall not issue the certificate of occupancy but shall declare such use to be in violation of this Zoning Ordinance.
- D. Within six (6) months after the adoption of this Zoning Ordinance, or any amendment thereto, the City shall prepare a record of all known nonconforming uses and occupations of lands, buildings and structures including tents and trailer coaches, existing at such time. Such record shall contain the name and address of the owner of record of such nonconforming use and of any occupant, other than the owner, the legal description of the land and the nature and extent of such use. Such list shall be available at all times in the office of the City Clerk.

Section 26.85 Application to Previously Filed Plans.

In any case where plans and specifications for a building or structure have been filed, which building or structure would conform with the zoning regulations in effect on the date of such filing, but not with the regulations of this Zoning Ordinance, and where a zoning permit for such building or structure has been issued and construction work started on the effective date of this Zoning Ordinance, such work may proceed, provided it is completed within one (1) year of such date.

BOYNE CITY ZONING BOARD OF APPEALS

OFFICIAL APPLICATION FOR A PUBLIC HEARING

APPLICANT'S NAME Town & Country Cedar Homes DATE 11-10-92
 ADDRESS 4772 US 131 South
Petoskey, MI 49770 PHONE # 616-347-4360
 Property Location 417 Bay Street
 Lot/Parcel Part of Block 1, Wm T. Addis Addition
 Property Use Residential
 Zoning District R-2
 Property Code No. 15-051-171-005-00
 Legal Description Part of Block 1 Wm T. Addis Addition
to Spring Harbor (City of Boyne City)

Property Owner's Signature Pamela F. Manning Phone # 313-380-4611
 Property Owner's Address 20134 Northville Place Dr.
Apt. #3305 Northville, MI 48167

Fee Payment (\$225) must be enclosed sending with original application
 other owners Jackalyn Malloy & Debbie Potter

CRITICAL DATES AND NOTICES

Application Filed 11-10-92 Legal Notice _____ Public Hearing _____
 Adjoining Owners Notified _____

EXPLAIN REASONS WHY YOU WANT THIS HEARING. (Use additional blank sheets, if necessary.):
The property owners would like to obtain a variance due to the encroachment of the front property line set back. The owners would like to remove the existing home and with the utilization of the existing basement rebuild. The owners would also like to enlarge the existing footprint but will be remaining under the 30% square footage criterion.

Applicant must also supply maps, drawings, pictures, graphs, etc., in order to inform the Board of the type of expansion to be done and how it will look when done. This information must be supplied at least 3 weeks prior to the date of hearing.

No action will be taken on this hearing until all fees are paid and this form is fully completed and returned to the City Clerk.

ITEM V
Zoning Board of Appeals
December 3, 1992

INTEROFFICE MEMO

TO: Chair Pat Kubesh and
Members of the Zoning Board of Appeals

DATE: 30 November 1992

FR: Sue Hobbs
City Clerk

RE: Proposed variance request from Town and Country Cedar Homes.

This variance is requested by Town and Country Cedar Homes representing Pamela Manning of 417 Bay Street. The owner is proposing to remove the existing home and, utilizing the existing basement, rebuild a Town and Country Cedar Home on this site.

The topography of the area does not allow the home to be moved closer to the front lot line, leaving 20' rather than the required 25' to the approximate high water line which would be the rear property lot line. The proposed new construction does not encroach any further into the backyard than the existing building (see attached topographical survey).

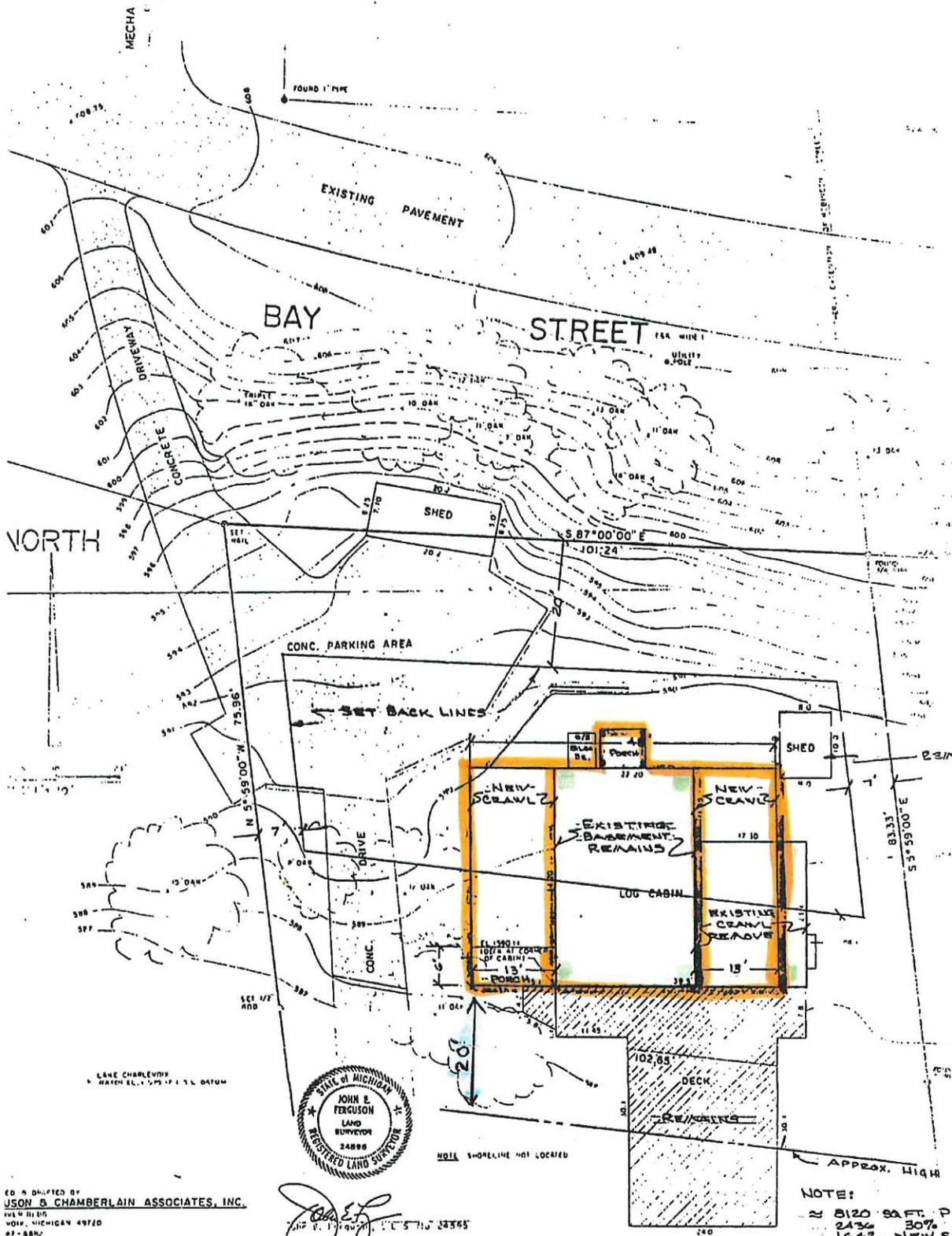
Considering the presence of a steep bluff, the existing building and deck, and the meandering lot line with the water level, administration recommends approval of this 5' variance request.

SH/l:boards/zba/dec92.agd

EXISTING

PROPOSED

VARIANCE REQUES



ED & DESIGNED BY
 USON & CHAMBERLAIN ASSOCIATES, INC.
 144 W. BLVD
 WALKER, MICHIGAN 49780
 41-6882



City of Boyne City

P. O. Box 68

Boyne City, Michigan 49712

Phone 616-582-6597

MEETING OF
12-3-92

RECORD OF THE PROCEEDINGS OF THE BOYNE CITY ZONING BOARD OF APPEALS MEETING DULY CALLED AND HELD ON THURSDAY, 3 DECEMBER 1992, AT 5:05 P.M., IN THE COMMISSION CHAMBERS AT CITY HALL.

CALL TO
ORDER

The meeting was called to order by Chair Pat Kubesh at 5:15 P.M.

ROLL CALL

Present: Chair Pat Kubesh, William Casper, Thelma Behling, Doug Gabrielsen, Vic Ruggles arrived at 5:25 p.m.

Absent: Jim Knurick

Others Present: W. Randolph Frykberg, City Manager, City Clerk Sue Hobbs, Dennis Turbin and Mark Fruge', representing Town and Country Cedar Homes and property owner Pamela Manning.

APPROVAL OF
MINUTES

Motion by Casper, Seconded by Behling PASSED UNANIMOUSLY, to approve the minutes of the 1 October 1992 meeting.

CALL OF THE
MEETING

Discussion with representatives of the property owner ensued regarding whether or not it would be most beneficial to the property owner to designate the lakeside of the property as front yard and the street side as back yard.

Patrick Kubesh stated that the Board wanted to go on record interpreting the zoning ordinance as allowing property owners to make that choice in order that in the future each time a question arose in regards to lakeshore property, the question would not have to come to the Zoning Board of Appeals for interpretation. The precedent for letting the lakeshore property owners designate which would be front and which would be back yard was established in October 1991 Zoning Board of Appeals Meeting which interpreted the Zoning Ordinance as allowing lakefront property owners to designate yards.

Dennis Turpin then stated that the request for a variance was withdrawn due to the fact that there was adequate area on the street side of the building to meet the 25' rear yard required in R-2 zoned district, and 20' on the

lake side to meet the required 20' setback for front yard.

Vic Ruggles questioned whether or not this would create an inconsistency within the ordinance. City Manager Frykberg replied that the Ordinance specifies that a property owner on a corner lot may choose which yard is the front yard. This would work in the same manner.

MOTION TO ALLOW
LAKESHORE
PROPERTY OWNERS
TO DESIGNATE
FRONT AND BACK
YARD

Behling moved, Gabrielsen seconded, PASSED UNANIMOUSLY, to allow lakeshore property owners to designate front and back yards. Ruggles pointed out that this would allow more flexibility to the zoning ordinance. Frykberg noted that, due to the steep bank in the Bay Street area, this flexibility was needed. There are other residences to the west of this property that have zero setbacks for garages due to Bay Street running along the bluff, and the actual, platted street right-of-way extending down over the steep bank.

MEETING
ADJOURNED

Kubesh moved, Ruggles seconded a motion to adjourn the meeting at 5:40 P.M.

Sue Hobbs Sue Hobbs
City Clerk

.wp51\boards\zba\dec92.min

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **DJP Holdings LLC – Pamela Mrstik Manning**
 18273 Blue Heron Pointe Dr.
 Northville, MI 48168

HEARING DATE: **September 5, 2017**

PROPERTY DESCRIPTION

PT OF BLK 1 OF WM T ADDIS ADD TO SPRING HARBOR BEG AT A PT ON S SIDE OF BAY ST WHICH WOULD BE INT BY W LI OF ROBINSON ST IF EXT S TH S AL SD EXT W LI OF ROB- INSON ST TO SH OF LK CX TH WLY AL SH TO A PT SD SH 100FT MEAS PERP FROM W LI OF ROBINSON ST IF EXT TH N PARA WI EXT LI OF ROBINSON ST & 100 FT WLY TO S SI BAY ST TH AL S SI BAY ST TO POB

The subject parcel is located at 417 Bay St. Boyne City, MI 49712. The property is owned by DJP Holdings LLC and located in the Waterfront Residential District (WRD).

APPLICATION

Describe Variance Requests: The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 21.36 – Accessory Buildings and Structures, A. General Standards (3). *“Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.”* The variance request is for the removal and replacement of an existing nonconforming deck attached to the south side of the residence.

**BOYNE CITY
ZONING BOARD OF APPEALS**

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 **September 5, 2017** 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 DJP Holdings LLC.
2. The property identification number is 15-051-171-005-00.
3. The property is in the Waterfront Residential District (WRD).
4. The property is currently includes a principal residence and an accessory building.
5. Access to the property is provided by Bay St. which is a public road that bounds the north side of the parcel.
6. The adjacent properties to the north, east and west are zoned WRD.
7. The property is not irregularly shaped.
8. The topography of the property is steep on the northern half of the property sloping from north to south, and gradually sloping on the southern half, with a steep drop near the lakeshore.
9. Section 21.36 – Accessory Buildings and Structures, A. General Standards (3) states: “*Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.*”
10. The property is approximately 8,660 sq. ft. in size.
11. The minimum lot area in the WRD is 5,445 sq. ft.
12. The existing accessory structure (deck) is attached to the principal structure (residence).
13. The existing deck is nonconforming due to its encroachment into the 35’ waterfront setback: 35’ upland from the high water elevation as defined (582.4’).
- 14.
- 15.
- 16.
- 17.
- 18.

FINDINGS OF FACT UNDER SECTION 24.80. – 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 and/or unnecessary hardships 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.
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
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.

4. The need for the variance is not self created.
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.

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.

<p><i>Motion</i></p> <p><i>Roll Call:</i> <i>Aye:</i> <i>Nay:</i> <i>Abstain:</i> <i>Absent:</i></p>	<p>Date: 9-5-17</p>
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Original signature on handwritten copy in file
 Patrick Kubesh, Zoning Board of Appeals Chairperson

9-5-17
 Date

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.

CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members
From: Patrick Kilkenny, Assistant Planning Director
Date: September 5, 2017
Subject: Variance Request at 816 Lower Lake Drive



Background

The subject parcel is located at 816 Lower Lake Dr. Boyne City, MI 49712. The property is owned by Sharon A. Kemp and located in the Waterfront Residential District (WRD).

Property Description: 15-051-144-003-00
816 LOWER LAKE DR . CITY OF BOYNE CITY MILLERS ADDITION TO SPRING HARBOR SWLY 1/2 OF LOT 3 BLK D

The parcel is approximately 5,445 sq. ft. (66'x82.5') in size and includes a single family residence. The property is bounded by Lower Lake Drive (public road) to the southwest. Adjacent properties to the north, south, east, and west are zoned WRD. Parcels adjacent to the subject property to the south, east, and west are privately owned with existing residential dwellings, the parcel to the north is vacant.

Discussion

The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 21.36 – Accessory Buildings and Structures, A. General Standards (3). *“Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.”*

The variance request is for the addition of an attached 15'x16' car port on the front of the home, and the removal of an existing 5.3'x20.5' covered porch and replacement with a 8'x20.5' covered porch.

- The existing home encroaches into the 35' front yard setback approximately 17.3'.
- The proposed carport addition will require 27.2' of relief from the 35' front yard setback.
- The proposed covered porch will require 19.2' of relief from the 35' front yard setback.

Other factors

The topography of the property is steep on the northeastern and northwestern portion sloping from east to west, and generally flat on the southeastern and southwestern

portion (see attached site map). The existing home encroaches into the required 35' front yard setback approximately 17.3'. The existing porch encroaches into the required 35' front yard setback approximately 16.5'. The variance request will also require removal of the existing driveway and installation of a new pavement or hard surface material driveway providing access to the carport.

Summary

The applicant is requesting a variance of 27.2' from the 35' front yard setback for a carport addition, and 19.2' of relief from the required 35' front yard setback for the porch addition.

The ZBA should review the enclosed information, visit the property, and apply the standards in the City of Boyne City Zoning Ordinance.

Public Comment:

Letter of support from Haggard's Plumbing and Heating (attached)

Please find enclosed in this packet the following exhibits:

- A. Zoning Board of Appeals Application with site photos
- B. Area Map of Subject Property
- C. Layout Map of Subject Property
- D. Section 21.36 of the Boyne City Zoning Ordinance
- E. Findings of Fact



City of Boyne City

319 N. Lake Street
Boyne City, MI 49712-1188
231-582-0343

www.boynecity.com

No Faxed Copies/Originals only

ZONING BOARD OF APPEALS APPLICATION

Owner Name: Sharon A. Kemp
Address: 816 Lower Lake Drive Mailing address: PO Box 773 Boyne City
Boyne City
Phone: 313-399-4615 **E-mail:** skemp46@yahoo.com

Describe Variance Request: I am requesting a variance to build a carport for 1 car at the front of my home, and rebuild the front porch. See attached explanation.

Property Street Address: 816 Lower Lake Drive, Boyne City
Nearest Intersection: Lake Street @ Moll Park
Property Tax ID #: 051-144-003-00 **Zoning District:** _____
Legal Description of Property (attach separate sheet if necessary): Millers addition to Spring Harbor
Swly 1/2 of Lot 3 Block D

Please attach:

- Proposed building/construction with dimensions and front, side and rear yard setbacks
- Existing buildings/structures including decks, driveways, storage buildings, etc.
- Lot lines and dimensions and layout, including parking/loading areas
- Photos, prints, maps, graphics, or drawings of current site
- Copy of Soil Erosion permit application or MDNR permit application, if applicable
- Letter of approval from association's Aesthetic Review Committee, if applicable
- Well and/or septic permit or copy of approved City sewer/water application, if applicable
- Pertinent topographic features (steep slopes, trees, water, etc.)
- Road names, lakeshores, streams, easements, or other dedicated rights-of-way abutting the property
- Any other information you feel is necessary to present your case

Note: I understand and agree to abide by all provisions of the Boyne City Zoning Ordinance as well as all procedures and policies of the Boyne City Zoning Board of Appeals as those provisions, procedures, and policies relate to the handling and disposition of this application; that the above information is true and accurate to the best of my knowledge; and that a filing fee is due with this application. I understand that if the requested variance is granted, I am in no way relieved from all other applicable requirements. I grant permission to the Zoning Administrator and other City Officials to enter the property and make such investigations and tests as they deem necessary.

Owner's Signature Sharon A. Kemp **Date** 8/14/2017

This is to certify the required filing fee was received on 8/18/17 and documented with receipt number 89562. This application is scheduled for public hearing on 9/5/17.
Staff Initials PK

Section 27.45 Standards for Non-use Variances. (effective 4-28-2010)

- A. The Zoning Board of Appeals may authorize, upon an appeal, a non-use variance from the strict application of any provision of this Zoning Ordinance where, by reason of exceptional irregularity, narrowness, shallowness, shape, or area of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of this Zoning Ordinance would result in peculiar or exceptional practical difficulties upon the owner of such property.
- B. In hearing and deciding appeals for non-use 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.
 2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
 3. The Ordinance can be granted in such a fashion that the spirit of the Ordinance will be observed and public safety and welfare secured.
 4. The need for the variance is not self created.
 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.

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

Section 27.50 Standards for Use Variances. (effective 4-28-2010)

In consideration of variances from the allowed uses as prescribed by this Ordinance, the Zoning Board of Appeals shall, first determine that the proposed variation from use affirmatively meets all of the following general standards for unnecessary hardship:

- A. The proposed variation involves exceptional circumstances not found in other areas of the same zoning district.
- B. The proposed variation will be in harmony with the general purposes and intent of this Zoning Ordinance, and the Comprehensive Plan.
- C. The proposed variation will not in any respect impair the public health, safety, comfort or welfare of the inhabitants of the City.
- D. The proposed use will be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.
- E. The proposed use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle contact in residentially zoned districts.
- F. The location, size, intensity, site layout and periods of operation of such proposed use will be designed to eliminate any possible nuisance emanating therefrom, which nuisance might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.
- G. The location and height of buildings or structures and the location, nature and height of walls and fences will be such that the proposed use will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

Zoning Board of Appeals
816 Lower Lake Drive, Boyne City
August 14, 2017

I am asking for a variance to build a 15' wide carport, rebuild the porch and steps, and pour a concrete drive and walkway at the front of my home located at 816 Lower Lake Drive.

From the attached drawings you will see that this proposed carport will enhance the front (street) elevation of the home as the roof line peak will be built to match the existing peak of the bedrooms on the opposite side of the front of the home. The portion of the carport that faces the property to the south will have attractive lattice work and will not block the neighbor's view of Lake Charlevoix, and will be nicely landscaped when completed.

I am also asking to remove the existing front porch and build a new porch with similar covered roof that will make the porch 2.5' deeper. Stone matching what is on the home at the bedroom area will be repeated along the bottom of the new porch and at the back of the carport against the home. Entire front roof of home will be stripped and shingled as well as shingling the new porch area.

There will also be a new concrete drive from the street and under the carport as well as steps and a new concrete walk up to the front porch. The concrete drive under the carport will allow room for plowing in the winter time.

The property was purchased in June of 2017. One week after I moved into the home, the neighbors to the north of my property purchased 5 boulders that were placed exactly on the northern property line, which is 10' from my home. Each boulder is approximately 24-30" tall.

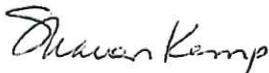
In addition, the gas meter and protective pole are also located on that side of the home, thereby reducing the amount of space I have to drive, park and utilize the car doors. These 5 boulders are the only non-movable objects on this vacant lot. It appears the lot is used to store multiple boat trailers in the summer and is used to store a boat on a trailer during the winter months.

There is no available space at the rear of the home, or on the south side of the home, to erect a carport structure or drive. The rear of my lot has a significant hill and a short wooden wall for erosion, 6.5' from the rear wall of the room at the northeast corner of my home. On the attached proposal for the carport, I have sketched the diagram of the room at the northeast corner of the home as it is not outlined on the survey that is dated 1987.

The homes along Lower Lake Drive vary significantly in architecture, and many homes are very close to the 66' wide easement for the street that is shown on the survey from 1987. The home I have purchased was built in 1936 prior to the time the building requirements for waterfront areas were in place.

The new carport, drive, walkway and front porch will be an enhancement to the neighborhood and will not block any views of the lake. The landscaping when completed will also be an enhancement to the street.

Thank you for your consideration,



Sharon Kemp

816 Lower Lake Drive

Boyne City, MI

Subject: House and drive
From: Sharon Kemp (skemp46@yahoo.com)
To: skemp46@yahoo.com;
Date: Friday, August 11, 2017 8:53 PM



Area proposed
for carport.



Sent from Yahoo Mail on Android

Attachments

- 20170809_122414.jpg (1.43MB)
- 20170809_122324.jpg (1.62MB)

↙ Rear Property Stake

↘ gas meter and parking pole

FmHA (WILLIAMS) NM-19503-M (FRIEDMAN-TRAINOR) NM-27888-PLC (FRIEDMAN-TRAINOR)

CERTIFICATE OF MORTGAGE INSPECTION

CERTIFIED TO: Farmers Home Administration

REVISED & RE-CERTIFIED: August 31, 1987

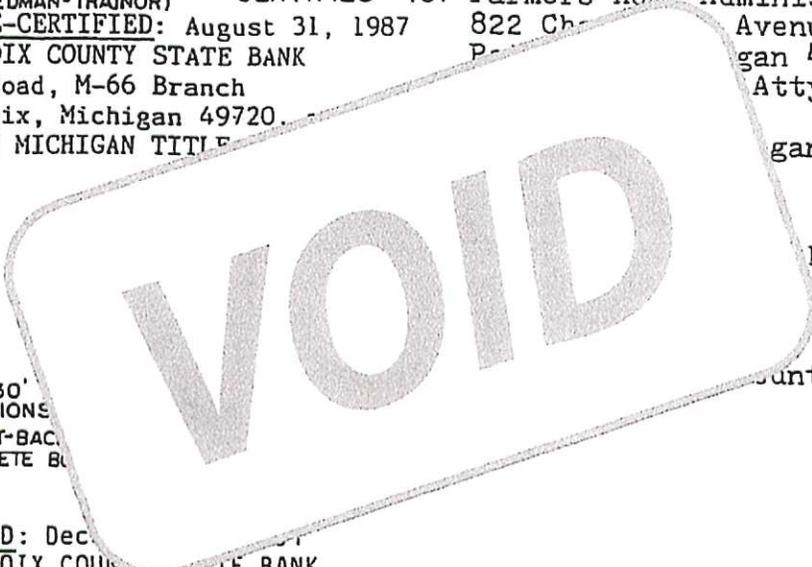
822 Charlevoix Avenue
Charlevoix, Michigan 49770, and
Atty.

TO: CHARLEVOIX COUNTY STATE BANK

Stover Road, M-66 Branch
Charlevoix, Michigan 49720.

NORTHERN MICHIGAN TITLE CO.

Charlevoix, Michigan 49720



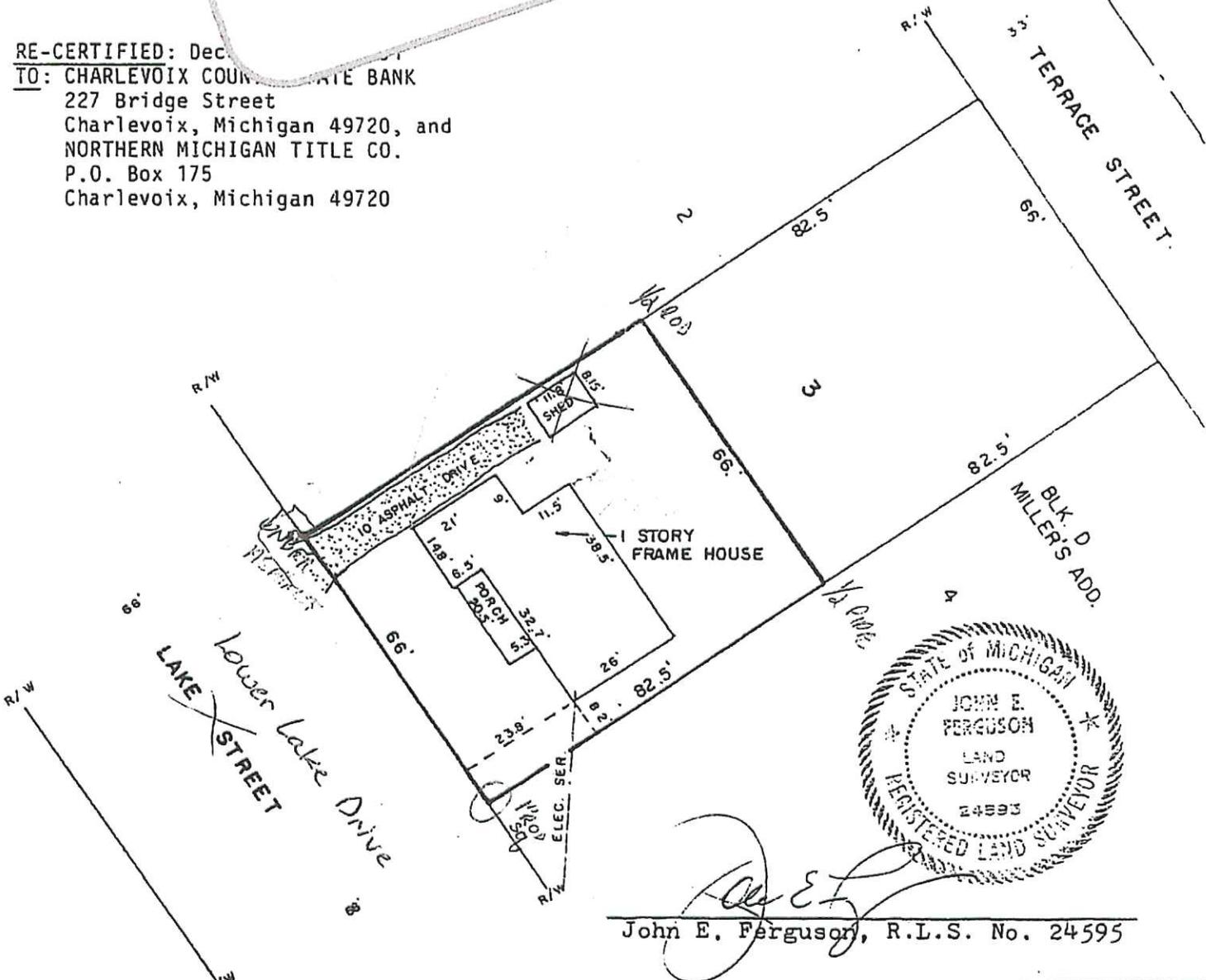
SCALE: 1"=30'
ALL DIMENSIONS
PRECISE SET-BACK
TO A COMPLETE B...

Boyer City, Charlevoix

Block D of MILLER'S ADDITION
according to
County Records.

RE-CERTIFIED: Dec 1987
TO: CHARLEVOIX COUNTY STATE BANK

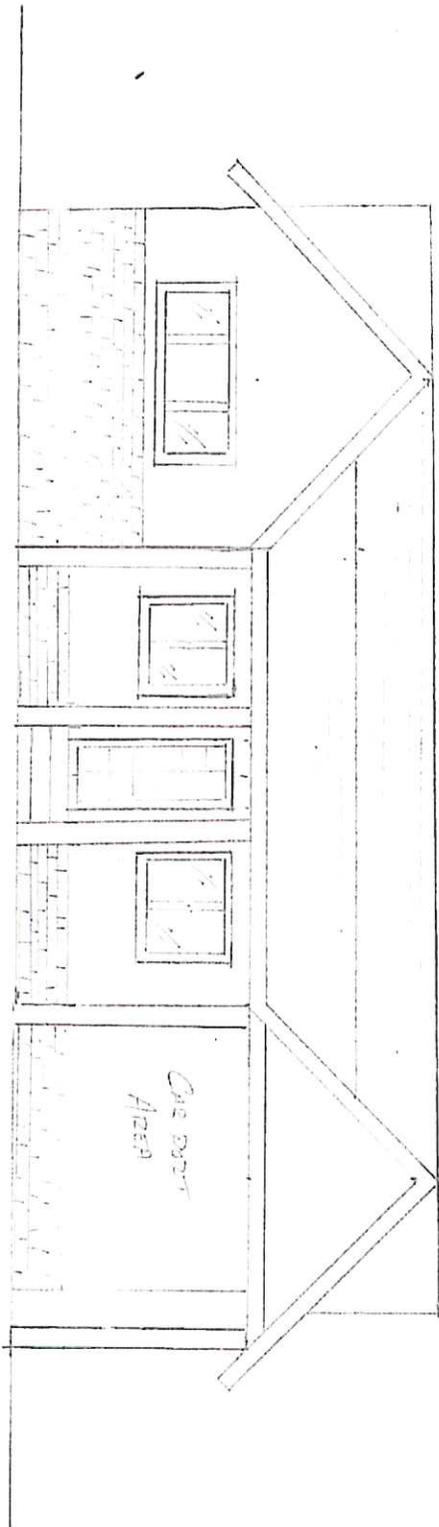
227 Bridge Street
Charlevoix, Michigan 49720, and
NORTHERN MICHIGAN TITLE CO.
P.O. Box 175
Charlevoix, Michigan 49720



John E. Ferguson, R.L.S. No. 24595

I HEREBY CERTIFY that I have inspected the property described hereon; and that there are no visible encroachments except as noted.

JOHN E. FERGUSON ASSOCIATES, INC.
— LAND SURVEYING —
PINE RIVER BUILDING
CHARLEVOIX, MICHIGAN 49720
(616) 547-6882



SARON KEMP - FRONT ELEVATION

1/8" SCALE

CITY OF BOYNE CITY
ZONING BOARD OF APPEALS

PUBLIC NOTICE

Notice is hereby given that, pursuant to rules and regulations as outlined in the Boyne City Zoning Ordinance Section 27.20, **a public hearing will be held by the Boyne City Zoning Board of Appeals on Tuesday, September 5, 2017 at 5:00 p.m.** in the City Commission Chambers at 319 N. Lake Street, Boyne City, MI, to review and consider the following:

1. A variance request from Pamela Mrstik Manning for parcel numbers 15-051-171-005-00 at 417 Bay Street, Boyne City, MI 49712. The applicant is requesting a variance from Section 21.36 – Accessory buildings and structures that where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main buildings.
2. A variance request from Sharon Kemp for parcel numbers 15-051-144-003-00 at 816 Lower Lake Drive, Boyne City, MI 49712. The applicant is requesting a variance from Section 21.36 – Accessory buildings and structures that where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main buildings.

More details on these variance requests are available for review at the Boyne City Planning Department, Monday through Friday, 7:30 a.m. through 4:30 p.m. All interested persons are encouraged to attend the public hearing and participate in the discussion. Any written input in regards to the requests may be submitted to the City Planner's office until 5:00 p.m. on the day of the public hearing or at the public hearing. For further information visit the City Planner's office at 319 N. Lake Street, Boyne City, MI 49712, or call (231) 582-0337 or e-mail pkilkenny@boynecity.com

Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

Date: August 22, 2017

To: Boyne City Planning Department
319 N. Lake St.
Boyne City, MI 49712

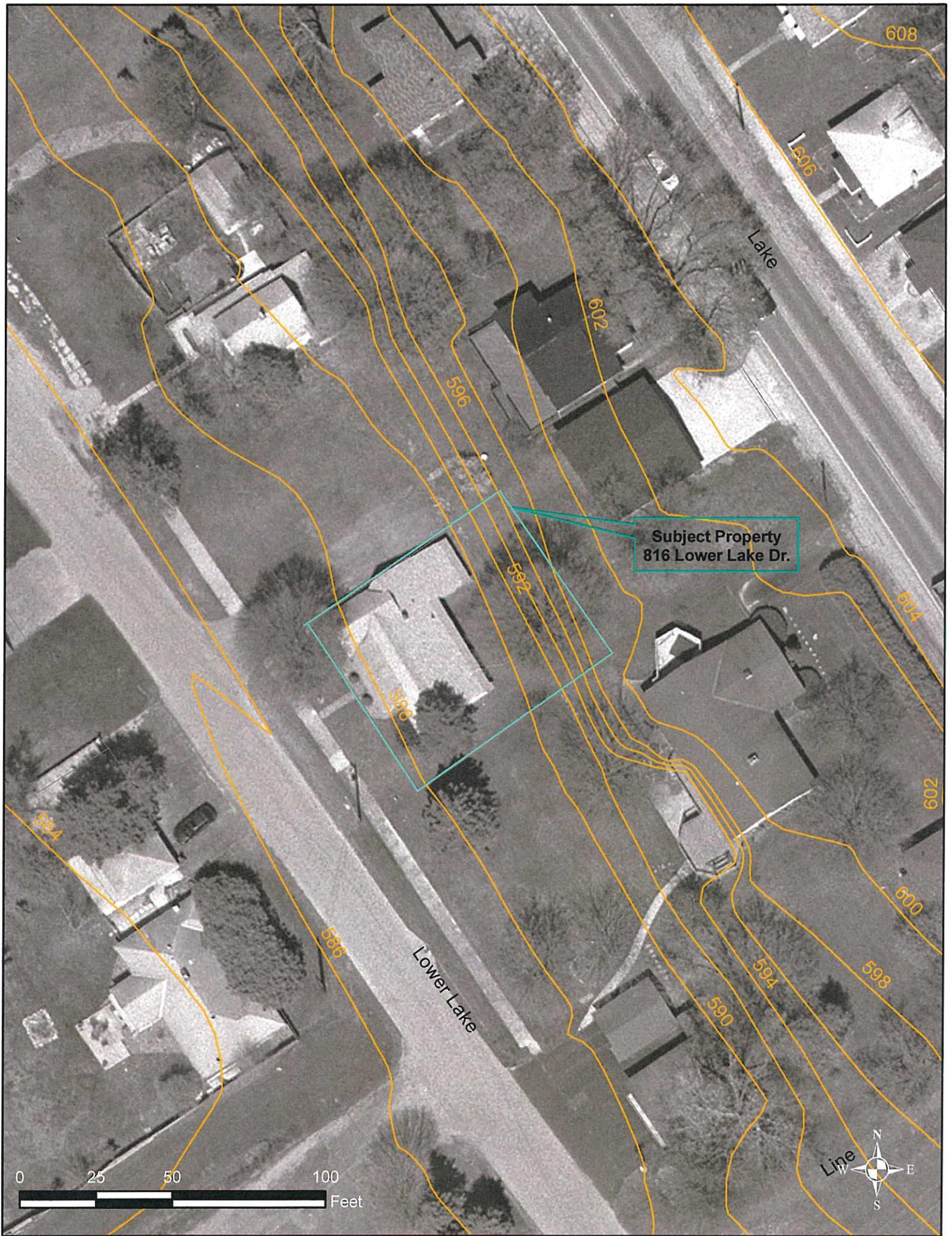
RE: Variance Request from Sharon Kemp at 816 Lower Lake Dr, Boyne City, MI 49712
Parcel#15-051-144-003-00

To Whom it May Concern,

Upon reviewing the above Notice of Public Hearing of the Zoning Board of Appeals, I would like to express my view with the above case's requests. We at Haggard's Plumbing & Heating are not at all opposed to the changes of the property and/or the request to the Zoning Board. If a property owner is fortunate enough to have the ability and the resources in this time of economical struggles to either build and/or improve their existing property, we would like to see their request granted. It would prove positive for the local, county, state and country to do all we can to improve and promote growth in any way possible.

Sincerely,

Haggard's Plumbing & Heating



**Subject Property
816 Lower Lake Dr.**

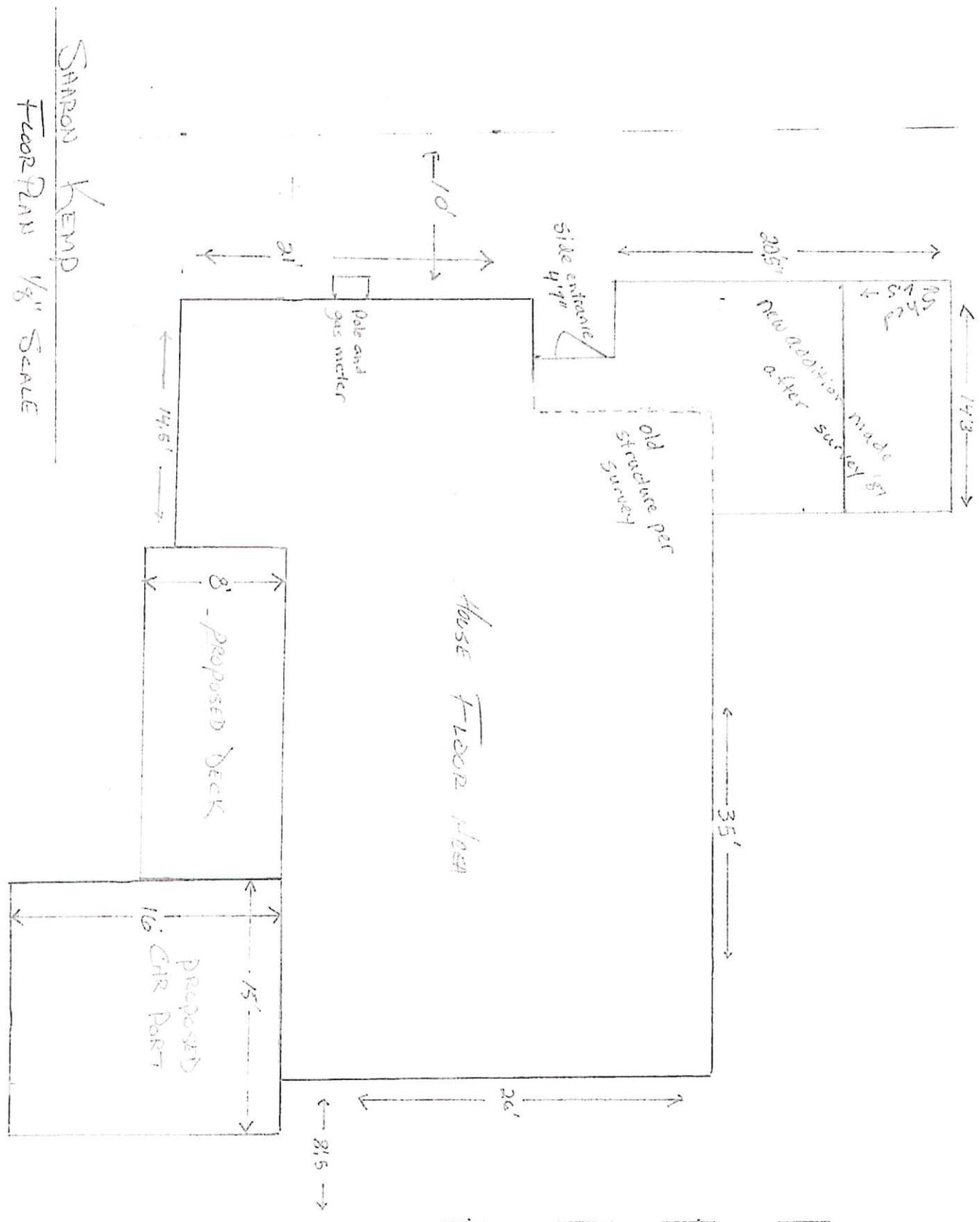
0 25 50 100 Feet



4111 1

4111 2

4111 3



SHARON KEMP
 FLOOR PLAN 1/8" SCALE

The finished sides of fences in the rear or side yard may face towards or away from the property on which they are placed. If a fence exists in the rear or side yard of an adjacent lot, only one (1) other fence may be placed along the adjoining boundaries of such adjacent lot. Areas between abutting fences must be maintained in accordance with this Ordinance and the City=s Code of Ordinances.

No fence, wall or screen shall be erected within any public right-of-way.

The use of electric current or charge on any fence or part thereof is prohibited. Electronic fences buried beneath the ground are not regulated by this Section.

- B. Trees, Shrubs, Flowers or Plants. Trees, shrubs, flowers or plants shall be permitted in any front, side or rear yard, provided it does not violate the corner setbacks as set forth in this Section.
- C. Other Specified Structures. Walls, driveways, curbs, retaining walls, mailboxes, name plates, lamp posts, bird baths and structures of a like nature shall be permitted in any front, side or rear yard.
- D. Swimming Pools, Private. Private pools shall be completely surrounded by a fence of not less than four (4) feet. Above ground swimming pools need not be fenced if their side walls are at least four (4) feet in height, or when a fence is secured on top of the side pool walls to a minimum of four (4) feet in height as measure from ground level. All swimming pool fences or walls shall be constructed as to have no openings larger than four (4) inches in dimension, except for doors and gates. All doors and gates shall be self-latching and self-closing.

Section 21.30 Rubbish and Waste Material.

It shall be unlawful throughout the city to openly store, collect or place garbage, discarded building materials, refuse, junk, inoperable and unlicensed motor vehicles, or other similar materials, except upon land owned and operated as a State approved solid waste site.

Section 21.32 Grades.

No premises shall be filled or grades established so as to discharge the surface runoff on abutting property in such a manner that will cause inconvenience or damage to adjacent properties.

Section 21.34 Access Through Yards.

Access drives may be placed in the required front or side yards so as to provide access to a rear yard. Further, any walk, terrace or other pavement serving a like function shall be permitted in any required yard.

Section 21.36 Accessory Buildings And Structures.

Accessory buildings and structures, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:



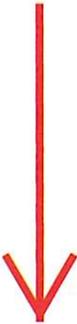
A. General Standards. (amended: September 29, 2011)

1. Accessory buildings, structures and uses are permitted only in connection with, incidental to and on the same lot with a principal building, structure or use. An accessory building, structure or use must be in the same zoning district as the principal building, structure or use on a lot.
2. No accessory building, structure or use shall be occupied or utilized unless the principal structure is occupied or utilized. No accessory building, structure or use may be placed on a lot without a principal building, structure or use.
3. Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this Ordinance applicable to main or principal buildings.
4. An accessory building shall not exceed twenty (20) feet in height and may occupy not more than the ground floor area of the principal building.
5. In any residential district, accessory buildings shall not be erected closer to the side lot line than the required setback distance for the dwelling, unless the accessory building is completely to the rear of the dwelling, in which event the accessory building may be erected three (3) feet from any side or rear lot line
6. In the case of double frontage lots or corner lots, accessory buildings shall observe front setback requirements on all street frontages.
7. No accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds (2/3) completed.

B. Garages. In any residential district, no garage shall be erected closer to the side lot line than the permitted distance for the dwelling, unless the garage is completely to the rear of the dwelling, in which event the garage may be erected three (3) feet from any interior side lot line. No garage or portion thereof shall extend into the required front yard area. Attached garages of fireproof construction may be erected to extend beyond the front line of the house in those areas which are being developed according to a common plan that includes the construction of attached garages extending beyond the front line of the house, provided that such garages shall not encroach in or upon the minimum front yard area as required by this Ordinance.

No garage, utility building or accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds (2/3) completed.

C. Mechanical Equipment. Mechanical equipment, such as blowers, ventilating fans and air conditioning units, shall be placed not closer than three (3) feet to any lot line in any business district, and not closer than twelve (12) feet to any lot line in all other districts.



D. Flagpoles. Flagpoles in single-family residential districts shall be not exceed forty (40) feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Flagpoles in other than single-family residential districts shall not exceed one-hundred (100) feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Section 21.38 Accessory Uses And Buildings in Business And Industrial Districts.

In business and industrial districts, accessory buildings and uses may occupy any of the ground area which the principal buildings is permitted to cover. Accessory buildings such as buildings for parking attendant, guard shelters, gate houses and transformer buildings may be located in the front or side yard of industrial districts.

Section 21.40 Zoning Permits Issued Prior to Effective Date.

Any building or structure for which a zoning permit has been issued and the construction of the whole or a part of which has been entered into pursuant to a building permit issued prior to the effective date of this Ordinance may be completed and used in accordance with the plans and applications on which said building permit was granted.

A building which is lawfully under construction at the time of adoption of this Ordinance shall be allowed to be completed within one (1) year of the passage of this Ordinance. Adoption of this Ordinance shall not require any changes to the plans, construction or designated use of any such buildings.

Section 21.42 Restoration of Unsafe Buildings.

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Planning Director, or required compliance with his or her lawful order.

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **Sharon A. Kemp**
 816 Lower Lake Dr.
 Boyne City, MI 49712

HEARING DATE: **September 5, 2017**

PROPERTY DESCRIPTION

816 LOWER LAKE DR . CITY OF BOYNE CITY MILLERS ADDITION TO SPRING HARBOR
SWLY 1/2 OF LOT 3 BLK D

The subject parcel is located at 816 Lower Lake Dr. Boyne City, MI 49712. The property is owned by Sharon A. Kemp and located in the Waterfront Residential District (WRD).

APPLICATION

Describe Variance Requests: The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 21.36 – Accessory Buildings and Structures, A. General Standards (3). *“Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.”*

The variance request is for the addition of an attached 15’x16’ car port on the front of the home, and the removal of an existing 5.3’x20.5’ covered porch and replacement with a 8’x20.5’ covered porch also on the front of the home.

- The existing home encroaches into the 35’ front yard setback approximately 17.3’.
- The proposed carport addition will require 27.2’ of relief from the 35’ front yard setback.
- The proposed covered porch will require 19.2’ of relief from the 35’ front yard setback.

**BOYNE CITY
ZONING BOARD OF APPEALS**

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 **September 5, 2017** 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 Sharon A. Kemp.
2. The property identification number is 15-051-144-003-00.
3. The property is in the Waterfront Residential District (WRD).
4. The property is currently includes a principal residence.
5. Access to the property is provided by Lower Lake Dr. which is a public road that bounds the southwest side of the parcel.
6. The adjacent properties to the north, east and west are zoned WRD.
7. The property is not irregularly shaped.
8. The topography of the property is steep on the northeastern and northwestern portion sloping from east to west, and generally flat on the southeastern and southwestern portion.
9. Section 21.36 – Accessory Buildings and Structures, A. General Standards (3) states: “*Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.*”
10. The property is approximately 5,445 sq. ft. in size.
11. The minimum lot area in the WRD is 5,445 sq. ft.
12. The existing single family residence encroaches into the 35' front yard setback approximately 17.3'
13. The existing deck encroaches into the required 35' front yard setback approximately 16.5'.
14. The variance request will also require removal of the existing driveway and installation of a new hard surface driveway with access to the carport.
- 15.
- 16.
- 17.
- 18.
- 19.

FINDINGS OF FACT UNDER SECTION 24.80. – 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 and/or unnecessary hardships 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.

CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members
From: Patrick Kilkenny, Assistant Planning Director
Date: September 5, 2017
Subject: Zoning Ordinance Interpretation –
Section 20.30(L)



Background

Following recent review of the zoning ordinance, Staff is requesting an interpretation of Section 20.30(L) by the Zoning Board of Appeals.

Discussion

Section 20.30(L) states: "No rear yard or side yard setback is required where such property abuts a public alley, providing that accessory buildings in the rear yard shall meet the required setback." The section seems contradictory in stating no rear or side yard setback is required for properties abutting a public alley, however, accessory buildings in the rear yard are required to meet setbacks.

Section 21.36 Accessory Buildings And Structures outlines various requirements for said structures, including 21.36(5): "In any residential district, accessory buildings shall not be erected closer to the side lot line than the required setback distance for the dwelling, unless the accessory building is completely to the rear of the dwelling, in which event the accessory building may be erected three (3) feet from any side or rear lot line."

Staff is requesting an interpretation of the ordinance as well as the intent of Section 20.30(L). Is the intent of the ordinance to allow a zero setback in the rear and/or side yards if a property abuts an alley or, to enforce the minimum required setbacks?

Following the ZBA's interpretation, Staff believes it would be beneficial to suggest zoning ordinance amendments to the Planning Commission clarifying the intent of Section 20.30(L).

Summary

Please discuss the above interpretation request and associated information to provide an interpretation of Section 20.30(L) and make any zoning ordinance amendment suggestions as necessary to the Planning Commission.

Please review the below definitions and attached sections relevant to the interpretation request.

Definitions:

Building, Accessory: A supplementary building or a portion of a main building, the use of which is incidental to, customarily found in connection with, devoted exclusively to, and subordinate to that of the main building and which is located on the same lot as the main building. "Accessory building" includes garages, garden equipment sheds, small greenhouses, swimming pools, and accessory apartments.

Structure: Any constructed or erected material or combination of materials in or upon the ground, including, but not limited to, buildings, mobile homes, aboveground swimming pools, radio towers, sheds, signs and storage bins, but excluding sidewalks and paving on streets, driveways, parking areas and patios.

ARTICLE XX SCHEDULE OF REGULATIONS

Section 20.10 Residential Districts.

Zoning District	Minimum Lot Per Unit		Maximum Height of Structure		Minimum Yard Setback (Per Lot In Feet)				Maximum Percentage of Lot Area Covered by All Buildings ^h	
	Area in Square Feet	Width In Feet	In Stories	In Feet	Front	Sides ^k		Rear		
						At Least One	Total of Two			
Rural Estate District (RED) o	10,890	100	2.5	30	30 c	10 k	30 k	30 l	800 first floor 1,200 if more than one story	30%
Traditional Residential District (TRD) o	5,445	50	2.5	30	10 c	5 k	15 k	15 l	672 first floor 1,000 if more than one story	40%
Waterfront Residential District (WRD) e, m, n, o	5,445	66	2.5	30	35	5 k	15 k	15	672 first floor 1,000 if more than one story	30%
Multiple Family Residential District (MFRD) e, m, n, o	g	100	2.5	35	40 d	25 d	50 d	50 d	500	30%
Manufactured Housing Park District (MHPD)	See Article VII Manufactured Housing Park District									

Section 20.20 Mixed Use and Non-Residential Districts.

Zoning District	Minimum Lot Per Unit		Maximum Height of Structure		Minimum Yard Setback (Per Lot In Feet)			Minimum Floor Area Per Unit (Square Feet)	Maximum Percentage of Lot Area Covered by All Buildings ⁱ
	Area in Square Feet	Width In Feet	In Stories	In Feet	Front ^j	Sides ^{c, l}			
						At Least One	Total of Two		
Professional Office District (POD)	5,445	50	2.5	35	10	5	15	15	60%
Waterfront Marina District (WMD) e, m, n, o	5,445	50	2.5	35	10	5	15	15	60%
Central Business District (CBD)	-	-	3.5	45	-	-	-	-	100%
Transitional Commercial District (TCD)	5,445	50	2.5	35	10	5	15	15	60%
General Commercial District (GCD)	10,890	75	2.5	35	10	5	15	15	60%
Regional Commercial/Industrial District (RC/ID)	21,780	100	2.5	35	20	10	25	25	60%
Planned Industrial District (PID)	21,780	100	2.5	35	50	25	50	25	40%
Community Service District (CSD) f, o	5,445	50	2.5	35	10	5	15	15	40%

All structures shall be set back a minimum of fifteen (15) feet from the 100 year floodplain. See Article XVI Flood Hazard District for the remaining regulations.

Section 20.30 Notes for Schedule of Regulations.

The following letters refer to the charts containing the schedule of regulations in Sections 20.10 and 20.20:

- a. Except for Section 21.46 C., all side yards abutting residentially zoned land shall have a minimum distance of twice the one yard requirement.
- b. All rear yards abutting residentially zoned land shall have a minimum distance of fifty (50) feet between the principal building and rear property line.
- c. Parking shall not be permitted in any required front yard, not withstanding off-street parking requires in CBD and PID districts.
- d. Multiple family dwellings which have all off-street parking provided behind the dwelling and have the main entrance to the building facing a public street may reduce required minimum yard setbacks (per lot in feet) as follows:

Front	Sides		Rear
	Least One	Total of Two	
5	-	-	30

- e. The Planning Commission may waive these standards if it determines it is necessary, in order to preserve public views and scenic vistas from being unreasonably obscured by development of lakeside properties or properties near bodies of water, to allow flexibility in the siting and construction of new buildings in such zoning districts.
- f. The Planning Commission may waive these standards if it determines it is necessary for the development of a site to be compatible with surrounding uses and buildings if such a site is adjacent to the CBD.
- g. Apartments shall comply with the applicable standards for the MFRD listed in Section 20.10. Single-family detached dwellings shall comply with the applicable standards for the TRD listed in Section 20.10. All other uses shall comply with the applicable standards for the CBD listed in Section 20.20.
- h. The total floor space in all buildings on the lot may not exceed one and one-half (1 2) times the total net lot area (floor area ratio of 1.5).
- i. The minimum floor area per dwelling unit shall not include areas of basements, breezeways, unenclosed porches, terraces, attached garages, attached sheds or utility rooms.
- j. In all zoning districts, except the CBD and PID Districts, the required front yard setback shall not be used for off-street parking, loading or unloading, and shall remain as open space, unoccupied and unobstructed from the ground upward, except for landscaping, plant materials or vehicle access drives; unless use of the front yard setback for off-street parking is determined necessary by the Planning Commission due to the size and configuration of the lot.
- k. In all residential districts, the width of side yards which abut upon a street on the same side or on the opposite side of the same block, upon which other residential lots front, shall not be less than the required front yard setback for homes which front upon such side street.
- l. No rear yard or side yard setback is required where such property abuts a public alley, providing that accessory buildings in the rear yard shall meet the required setback.

m. Setbacks

- 1) **Waterfront Setback:** For the purposes of this Ordinance the waterside of the structure shall be considered the front yard; except for docks, shoreline protection structures and walkways six (6) feet or less in width, all other structures shall be located a minimum of thirty-five (35) feet upland from the high water elevation as defined.
- 2) **Wetland Setback:** All structures or additions to existing structures shall be set back a minimum of twenty-five (25) feet from areas defined as wetlands in the Boyne City Comprehensive Plan.
- 3) **Road Setback:** For the purposes of this Ordinance the road side will be considered a rear yard and subject to the provisions of Article XX.

- n. **Height, area, lot coverage and yard regulatory is specified in Article XX of this Ordinance with the following exception:** Within the area described as follows: from the edge of Lake Charlevoix along the centerline of West Michigan Avenue to the centerline of North Lake Street to the intersection of Lower Lake Street, building height shall be defined as the vertical distance measured from the highest point of the finished grade adjacent to the building (excluding berms, flower boxes, and other similar increases in elevation) to the highest point of the roof of the building (excluding chimneys, antennas, and similar items) and such building height in this area shall not exceed thirty (30) feet.
- o. **The minimum combined side yard setbacks for buildings and structures on waterfront parcels shall not be less than thirty percent (30%) of the width of the corresponding cross section of the parcel. The percentage used for each side yard setback shall be consistent along the entire length of each side yard. Additionally, side yard setbacks may not be less than the minimum setback as listed for the district as required by this section unless specifically allowed by other provisions of this ordinance. (effective: December 31, 2008)**

The finished sides of fences in the rear or side yard may face towards or away from the property on which they are placed. If a fence exists in the rear or side yard of an adjacent lot, only one (1) other fence may be placed along the adjoining boundaries of such adjacent lot. Areas between abutting fences must be maintained in accordance with this Ordinance and the City's Code of Ordinances.

No fence, wall or screen shall be erected within any public right-of-way.

The use of electric current or charge on any fence or part thereof is prohibited. Electronic fences buried beneath the ground are not regulated by this Section.

- B. Trees, Shrubs, Flowers or Plants. Trees, shrubs, flowers or plants shall be permitted in any front, side or rear yard, provided it does not violate the corner setbacks as set forth in this Section.
- C. Other Specified Structures. Walls, driveways, curbs, retaining walls, mailboxes, name plates, lamp posts, bird baths and structures of a like nature shall be permitted in any front, side or rear yard.
- D. Swimming Pools, Private. Private pools shall be completely surrounded by a fence of not less than four (4) feet. Above ground swimming pools need not be fenced if their side walls are at least four (4) feet in height, or when a fence is secured on top of the side pool walls to a minimum of four (4) feet in height as measure from ground level. All swimming pool fences or walls shall be constructed as to have no openings larger than four (4) inches in dimension, except for doors and gates. All doors and gates shall be self-latching and self-closing.

Section 21.30 Rubbish and Waste Material.

It shall be unlawful throughout the city to openly store, collect or place garbage, discarded building materials, refuse, junk, inoperable and unlicensed motor vehicles, or other similar materials, except upon land owned and operated as a State approved solid waste site.

Section 21.32 Grades.

No premises shall be filled or grades established so as to discharge the surface runoff on abutting property in such a manner that will cause inconvenience or damage to adjacent properties.

Section 21.34 Access Through Yards.

Access drives may be placed in the required front or side yards so as to provide access to a rear yard. Further, any walk, terrace or other pavement serving a like function shall be permitted in any required yard.

Section 21.36 Accessory Buildings And Structures.

Accessory buildings and structures, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:



A. General Standards. (amended: September 29, 2011)

1. Accessory buildings, structures and uses are permitted only in connection with, incidental to and on the same lot with a principal building, structure or use. An accessory building, structure or use must be in the same zoning district as the principal building, structure or use on a lot.
2. No accessory building, structure or use shall be occupied or utilized unless the principal structure is occupied or utilized. No accessory building, structure or use may be placed on a lot without a principal building, structure or use.
3. Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this Ordinance applicable to main or principal buildings.
4. An accessory building shall not exceed twenty (20) feet in height and may occupy not more than the ground floor area of the principal building.
5. In any residential district, accessory buildings shall not be erected closer to the side lot line than the required setback distance for the dwelling, unless the accessory building is completely to the rear of the dwelling, in which event the accessory building may be erected three (3) feet from any side or rear lot line
6. In the case of double frontage lots or corner lots, accessory buildings shall observe front setback requirements on all street frontages.
7. No accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds (2/3) completed.

B. Garages. In any residential district, no garage shall be erected closer to the side lot line than the permitted distance for the dwelling, unless the garage is completely to the rear of the dwelling, in which event the garage may be erected three (3) feet from any interior side lot line. No garage or portion thereof shall extend into the required front yard area. Attached garages of fireproof construction may be erected to extend beyond the front line of the house in those areas which are being developed according to a common plan that includes the construction of attached garages extending beyond the front line of the house, provided that such garages shall not encroach in or upon the minimum front yard area as required by this Ordinance.

No garage, utility building or accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds (2/3) completed.

C. Mechanical Equipment. Mechanical equipment, such as blowers, ventilating fans and air conditioning units, shall be placed not closer than three (3) feet to any lot line in any business district, and not closer than twelve (12) feet to any lot line in all other districts.



D. Flagpoles. Flagpoles in single-family residential districts shall be not exceed forty (40) feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Flagpoles in other than single-family residential districts shall not exceed one-hundred (100) feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Section 21.38 Accessory Uses And Buildings in Business And Industrial Districts.

In business and industrial districts, accessory buildings and uses may occupy any of the ground area which the principal buildings is permitted to cover. Accessory buildings such as buildings for parking attendant, guard shelters, gate houses and transformer buildings may be located in the front or side yard of industrial districts.

Section 21.40 Zoning Permits Issued Prior to Effective Date.

Any building or structure for which a zoning permit has been issued and the construction of the whole or a part of which has been entered into pursuant to a building permit issued prior to the effective date of this Ordinance may be completed and used in accordance with the plans and applications on which said building permit was granted.

A building which is lawfully under construction at the time of adoption of this Ordinance shall be allowed to be completed within one (1) year of the passage of this Ordinance. Adoption of this Ordinance shall not require any changes to the plans, construction or designated use of any such buildings.

Section 21.42 Restoration of Unsafe Buildings.

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Planning Director, or required compliance with his or her lawful order.