

**Meeting Of
November 7, 2017**

Record of the proceedings of the Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 319 N. Lake Street, on Tuesday, November 7, 2017 at 5:00 p.m.

Call To Order

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

Roll Call

Present: Bob Carlile, Pat Kubesh, John McClorey and Lynn Murray
Absent: Roger Reynolds (Arrived at 5:05 pm)

Meeting Attendance

City Officials/Staff: Assistant Planning and Zoning Administrator Patrick Kilkenny
and Recording Secretary Pat Haver
Public Present: Two

**Approval of the Minutes
MOTION**

ZBA 2017-11-07-2

McClorey moved, Murray seconded, PASSED UNANIMOUSLY, a motion to approve the October 12, 2017 special meeting minutes as presented.

**Hearing Citizens Present
Correspondence(s)**

None

New Business

**Variance Request
854 Front St.
Gran M & Mandy S.
Jurkovic**

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is requesting an additional 2 foot variance to the already existing non-conforming structure. The variance request is to extend the deck an additional two feet (2') into the 35' required setback; a total of twelve feet (12') of relief requested from the required 35' waterfront setback. The property owner has filed a joint permit application with the Michigan Department of Environmental Quality/US Army Corp of Engineers for a permit to install new toe stones and re-work existing riprap. As of this time, an approval on the application has not been received from the DEQ.

Roger Reynolds arrived at 5:05 pm

Public Hearing opened at 5:06 pm

Bob Drost: Representative for the applicants – Currently the deck is 9 feet by 30 ft, and once a table and chairs is set in place, it is difficult to get around while entertaining. They do not use the deck in the morning, due to the exposure and only use the lower level deck. They would like to install a roof over the upper deck and extend it 2 feet and feel that it will be much more practical and useable. They currently are working on obtaining approval and a permit for shoreline work from the DEQ and Corps of Engineering that will allow them to build out creating a forward movement of the all-time high water mark

Harry Tuller: 923 W. Division St. – I am a neighbor, and support the request, I feel that it will not be a problem to the neighbors.

Carlile – I see this as a convenience to make the house more livable; I am having difficulty defining the hardship?

Drost - Family can't use the deck at all to entertain; if they put a roof on and extend it by the 2 ft it makes a huge difference to the family. They have a permit application for larger boulders to move the shoreline out 2 feet, I need to fix the

steps leading down to the water a second time. This site is unique to the lake, and the deck is in the air, so won't have an impact on the neighboring properties.

Reynolds – According to the drawings the steps are a part of the building already and with the deck expansion, they will be eating up a part of these steps leading down to the lawn, and are not going any further into the lawn area.

Drost – How are the steps determined?

Kilkenny – You can have steps down to the water's edge.

Reynolds – If you are not moving the steps, it appears that the deck will be overhanging the steps. **Drost** – Correct, the steps are not moving, just the deck platform for more useable space.

Reynolds – Why is a permit needed, if they are not moving the steps?

Kilkenny – They are requesting to expand a non-conforming structure, adding new material the full length of the deck, is the reason we are here.

Carlile – Hung up on the word hardship; which means they can't use the property at all.

Drost – I don't see any negative impact to the neighbors.

Public Hearing closed at 5:21 pm

With no further discussion, Kubesh facilitated the discussion on the General Findings of Fact with the board adding two additional points :

14. *DEQ authorized/approved permit arrived today (received and filed in project file)*
15. *With work on the shoreline as approved, the distance from the proposed deck and water will not change.*

and then moved onto the Findings of Fact under Section 24.80

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. *Looking at practical difficulties; affirmative vote taken; passes 3 - 2*
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *Affirmative 2 ft. request is very small*
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. *No*
4. The need for the variance is not self-created. *No*
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.

MOTION

Motion by McClorey, seconded by Murray to deny the application under the non-use variance as presented as not meeting items 1, 3, and 4 under the Findings of Fact under Section 24.80

2017-11-07-5A.

Roll Call

Ayes: Carlile, McClorey and Murray

Nays: Kubesh and Reynolds

Abstain: None

Absent: None

Motion Carries

Old Business and Reports of Officers, Boards and Standing Committees

None

Good of the Order

Some members of the board questioned their role in not being able to be flexible with some of the requests for variances. They felt in some situations, the applicant did not need to come before the board and should not require a variance. Should the Planning Commission look at the district requirements? Assistant Planning and Zoning Administrator Kilkenny reiterated that much of the requirements for decisions made by the ZBA is outlined in the Planning Enabling Act, which is legislative from the state and is law.

Announcements

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

Adjournment MOTION

ZBA 2017-11-7-10

Murray moved, Reynolds seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, October 12, 2017 Boyne City Zoning Board of Appeals meeting at 5:45 p.m.

Pat Kubesh, Chair

Pat Haver, Recording Secretary