

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, September 3, 2019
5:00 P.M.
Boyne City Commission Chambers, City Hall



www.cityofboyne.com

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

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF MINUTES – May 7, 2019
3. HEARING CITIZENS PRESENT (on non-agenda items)
4. CORRESPONDENCE
5. NEW BUSINESS
 - A. Variance Request – 419 E. Lincoln St.
6. OLD BUSINESS
 - A. None
7. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES
8. GOOD OF THE ORDER
9. ANNOUNCEMENTS
 - A. Next regularly scheduled meeting: October 1, 2019
10. ADJOURNMENT

*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*

**Meeting Of
May 7, 2019**

Record of the proceedings of the Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 319 N. Lake Street, on Tuesday, May 7, 2019 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 Roger Reynolds
Absent: None
Vacancy: One

Meeting Attendance

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

**Approval of the Minutes
MOTION**

ZBA 2019-5-7-2
Carlile moved, Reynolds seconded, PASSED UNANIMOUSLY, a motion to approve the September 11, 2018 meeting minutes as presented, with the correction of Murray added under the ayes for motion 2018-9-11-5A.

**Hearing Citizens Present
Correspondence(s)**

None

New Business

**Variance Request
413 Bay St.
Kurt and Brigit Anthony**

Public Hearing opened at 5:02 pm

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is seeking relief from the 15 foot rear yard setback; due to the steep slopes in the amount of five feet (5'). In reviewing ZBA records in the vicinity, four relevant cases on Bay Street have been before the ZBA also requesting relief from the rear yard setback.

Eric Render: Contractor for the applicant. – The steep topography is very limiting for a building envelope. As evidenced in the past, this issue has come up with other lots in the immediate area. As this lot is a bit deeper, we are not requesting as much relief, only 5 feet.

Public Hearing closed at 5:06 pm

Board Discussion

With no further discussion, *Kubesh facilitated the discussion on the General Findings of Fact and wanted one point added; Bay Street has limitations as the right of way is pushed to the North due to existing topography and narrowness of the road,* 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. *Affirmative looking at the practical difficulties and the steep slopes in the vicinity*

2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *Affirmative*
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. *Affirmative; 4 other previous variance requests have been granted in the vicinity due to the topography. Concerned about safety with the winter snow and ice pack on a steep driveway*
4. The need for the variance is not self-created. *Affirmative, due to the topography of the area*
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. *Affirmative, due to the steep topography of this lot.*

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 Carlile, seconded by Reynolds to recommend approval of the requested variance as presented; five feet (5') of relief from the fifteen foot (15') rear yard setback.

2019-5-7-5A.

Roll Call

Ayes: Carlile, Kubesh, McClorey and Reynolds

Nays: None

Abstain: None

Absent: None

Vacancy: One

Motion Carries

**Kubesh and Reynolds Term
Expiration: September
2019**

MOTION

The term of Pat Kubesh and Roger Reynolds are due to expire in September 2019. Both members have indicated they are willing to serve another three year term. After board discussion, **motion by McClorey, seconded by Carlile**, 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, 2022.

ZBA 2019-5-7-5B.

Roll Call

Ayes: Carlile, Kubesh, McClorey and Reynolds

Nays: None

Abstain: None

Absent: None

Vacancy: One

Motion Carries

Election of Officers
MOTION

Motion by McClorey, seconded by Reynolds, to leave the slate of officers as they currently are, Pat Kubesh as Chair and Bob Carlile as Vice Chair of the Zoning Board of Appeals

ZBA 2019-5-7-5C.

Roll Call

Ayes: Carlile, Kubesh, McClorey and Reynolds

Nays: None

Abstain: None

Absent: None

Vacancy: One

Motion Carries

Adoption of the 2019
Meeting Calendar
MOTION

ZBA 2019-5-7-5D

Included in the agenda packet is the 2019 meeting calendar for your review and consideration. **Motion by Reynolds, seconded by Carlile, PASSED UNANIMOUSLY,** to adopt the calendar as presented for January 2019 through May 2020 with the meetings to be held the 1st Tuesday of each month at 5:00 pm.

Recommendation for
Zoning Board of Appeals
Appointment Monica
Ross
MOTION

Assistant Planning Director Kilkenny reviewed his staff report included in the agenda packet. There is a vacancy on the board with a term ending September 1, 2021. There was 1 submitted application for the position, and Monica Ross was invited to the meeting to meet and speak with the board. After board discussion, **motion by Kubesh, seconded by Carlile, PASSED UNANIMOUSLY,** to recommend to the City Commission the appointment of Monica Ross to fill the vacancy on the Zoning board of Appeals, with a term expiring September 1, 2021.

Old Business and
Reports of Officers, Boards
and Standing Committees

None

Good of the Order
Announcements

Pat Kubesh will be unavailable for the July meeting

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for June 4, 2019 at 5:00 p.m.

Adjournment
MOTION

ZBA 2019-5-7-10

McClorey moved, Carlile seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, May 7, 2019 Boyne City Zoning Board of Appeals meeting at 5:29 p.m.

Pat Kubesh, Chair

Pat Haver, Recording Secretary

CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members
From: Patrick Kilkenny, Assistant Planning Director
Date: September 3, 2019
Subject: Variance Request at 419 E. Lincoln St.



Background

The subject parcel is located at 419 E. Lincoln St. Boyne City, MI 49712. The property is owned by David & Marcella Hill and located in the Traditional Residential District (TRD).

Property Description: 15-051-368-335-00
CITY OF BOYNE CITY, NICHOLLS & MORGANS THIRD ADDITION TO SOUTH BOYNE LOT 335 BLK 21.

The parcel is approximately 11,434 SQ. FT. sq. ft. in size and bounded by E. Lincoln Street, a public road, to the south. Adjacent properties to the north, south, east, and west are zoned TRD and are privately owned. The attached plat map shows an alley immediately west of the property which was vacated in 2017.

Discussion

The TRD requires a minimum five foot (5') setback from the side lot line. The application shows a request for a two inch (2'') side yard setback, or four feet ten inches (4' 10'') of relief from the required minimum five foot (5') setback from the side lot line.

The Zoning Board of Appeals application shows the proposed location of the car port and the approximate location of the drain field in the rear yard. The application also includes an example of the type of carport the Hill's are proposing to construct.

Other factors

The topography of the property is gradually sloping from south to north on most of the property, then steeper on the far northern portion.

The applicants also own the adjacent property to the west, across the vacated alley, at 409 E. Lincoln St.

Summary

The applicant is proposing a new accessory structure on a lot in the TRD, and requesting a two inch (2'') side yard setback, or four feet ten inches (4' 10'') of relief from the required minimum five foot (5') setback from the side lot line.

Hill / 419 E Lincoln St.

Page 1 of 2

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

Public Comment:

8/19/19 Letter of support from Haggard's Plumbing and Heating

Please find enclosed in this packet the following exhibits:

- A. Zoning Board of Appeals Application
- B. Area Map of Subject Property
- C. Findings of Fact
- D. Letter of support from Haggard's Plumbing and Heating

Subject Property
419 E. Lincoln St.



Lincoln





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: David + Marcella Hill
Address: 419 E Lincoln St.
Boyne City, MI 49712
Phone: 231-881-2219 **E-mail:** Marcella.koss@gmail.com

Describe Variance Request: We request a variance in the side-lot setback
in order to build a carport which will approach the side
lot line closely

Property Street Address: 419 E Lincoln St. Boyne City
Nearest Intersection: Lincoln St blw Front + High Sts.
Property Tax ID #: 051-368-335-00 **Zoning District:** _____

Legal Description of Property (attach separate sheet if necessary): City of Boyne City,
Niehous + Morgans Third addition to South Boyne lot 335 Bk 21

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 Marcella Hill **Date** 8/3/2019

This is to certify the required filing fee was received on 8-6-19 and documented with receipt number 110800. This application is scheduled for public hearing on 9-3-19.
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.

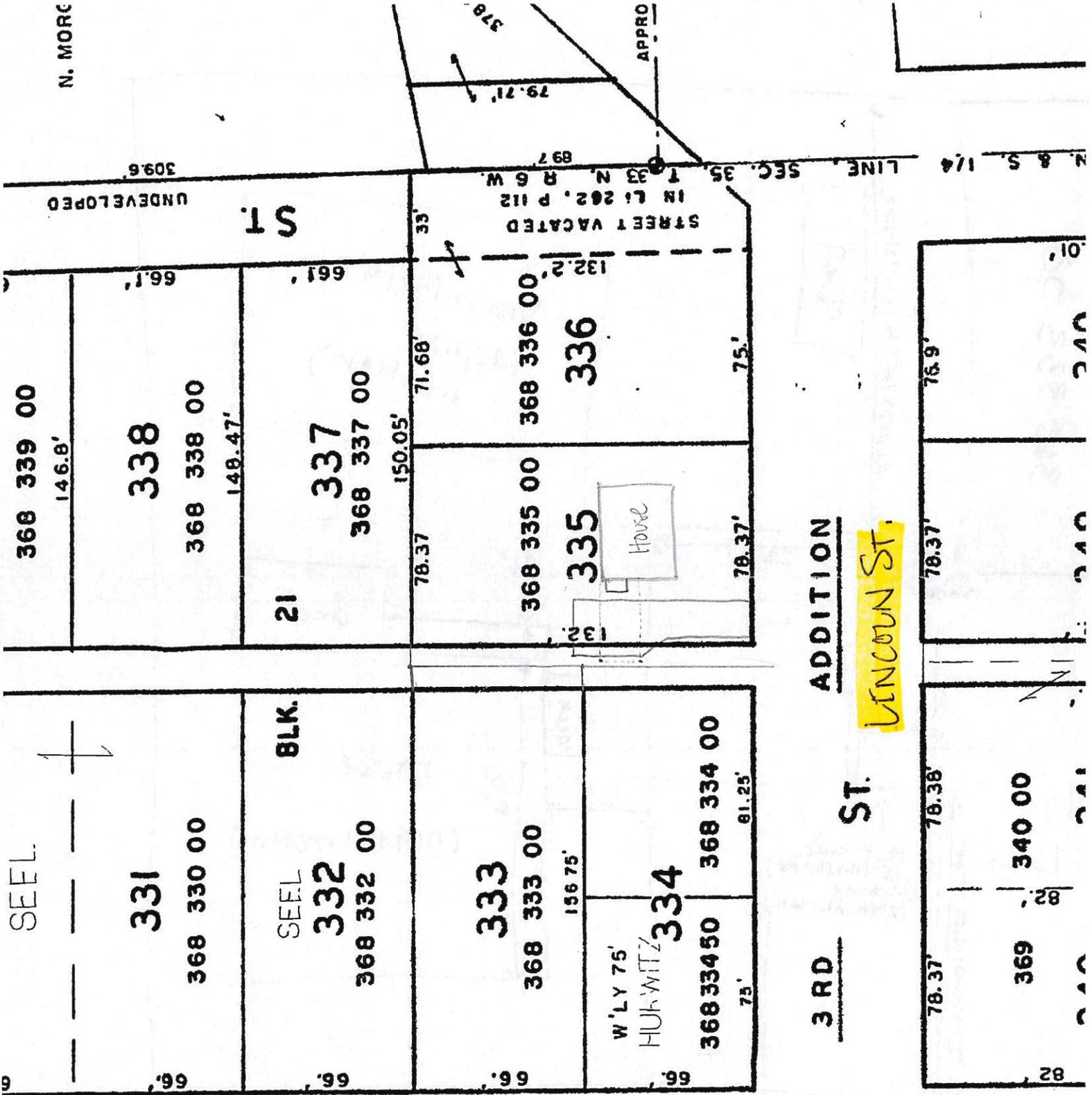
The Board shall grant no non-use variance if it finds an application does not meet all of the above listed criteria for determining whether or not a practical difficulty exists.

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:

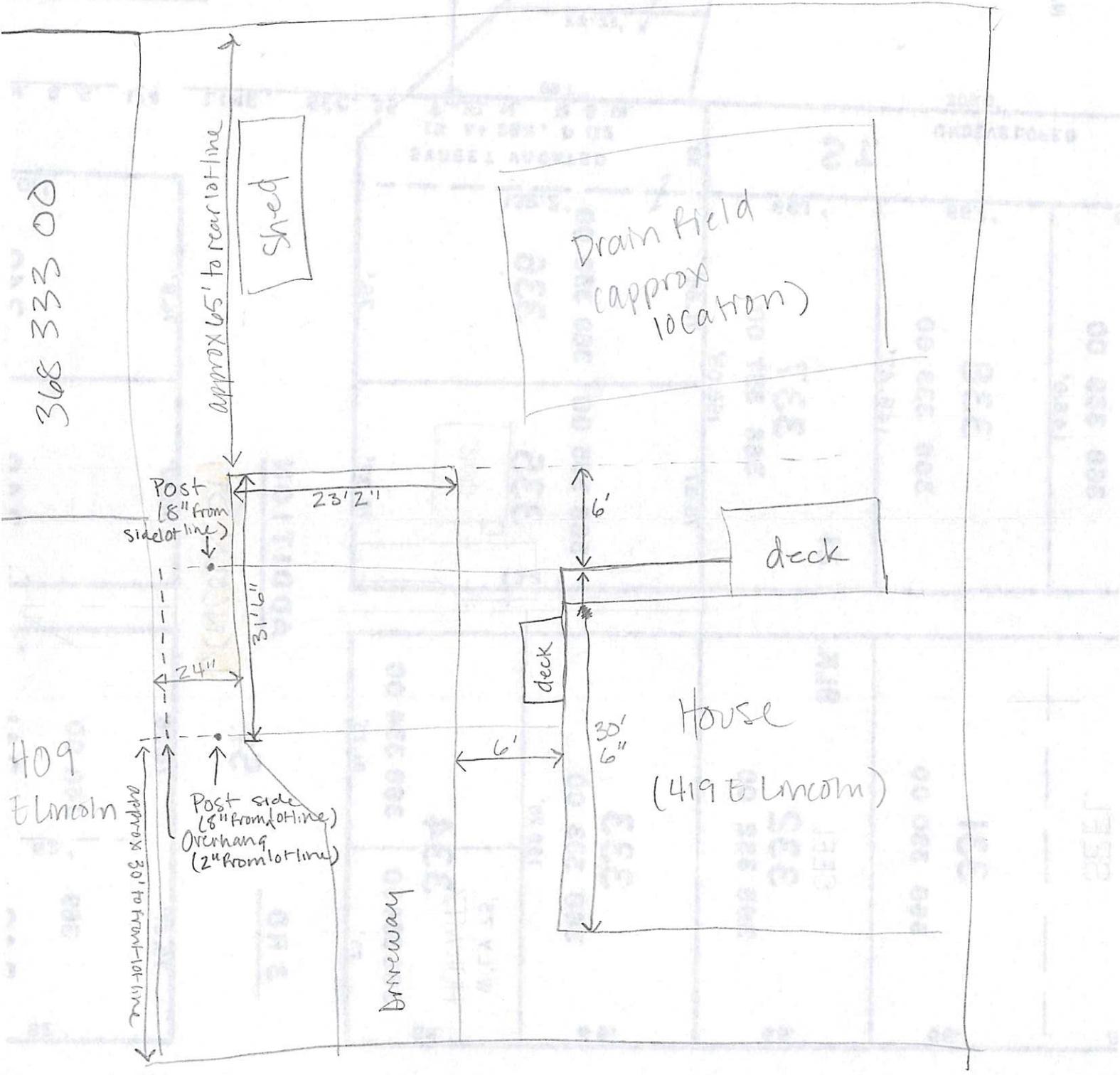
- A. The proposed variation involves exceptional circumstances not found in other areas of the same zoning district.
- B. The proposed variation will be in harmony with the general purposes and intent of this Zoning Ordinance, and the Comprehensive Plan.
- C. The proposed variation will not in any respect 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.

★ SEE REVERSE ★



GRANT ST.

Proposal for covered parking area (carport) @ 419 E Lincoln St.



Aug. 6, 2019

To the committee:

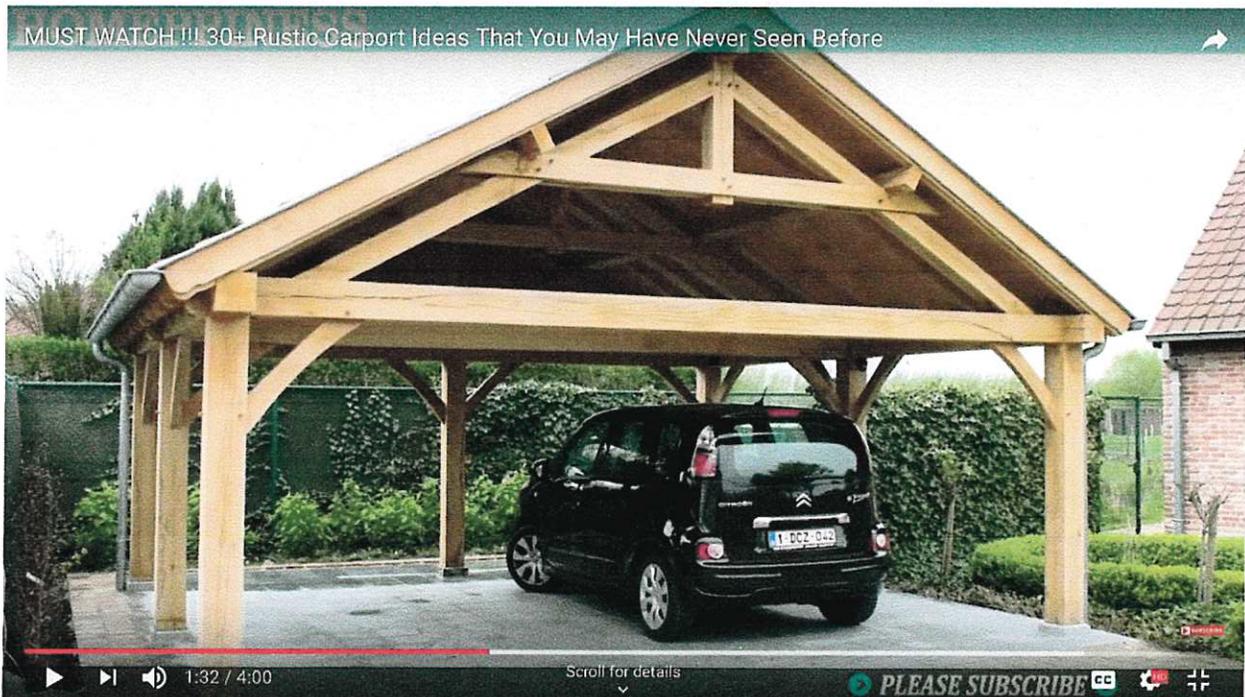
We are hoping to build covered parking at our home similar to the one pictured below (though not a detached structure as picture—we do plan to attach it to our home.)

We are applying for a variance to the City of Boyne's side lot setback requirement for structures. In order to build coverage over the two side-by-side existing parking spots at the top of our driveway we will need to place the posts approximately 16 inches from the side lot line, and the roof overhang of the structure would reach to about 2 inches from the side lot line.

We did look in to building a carport or garage further to the back of our lot—behind the house—which would allow us to move it further from the side lot line. This is not an option, however, as most of our back yard is the drainage field for our septic system so there would not be adequate space. We unfortunately do not have access to city sewer.

Thank you for your consideration. We are excited about the possibility of making this convenient and attractive improvement to our home!

Dave and Marcy Hill



Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

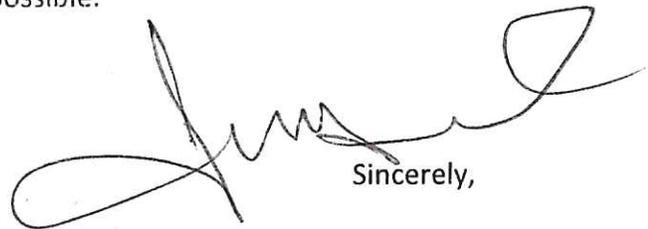
Date: August 19, 2019

To: City Planners Office
319 N. Lake St.
Boyne City, MI 49712

RE: Variance Request from David & Marcella Hill Parcel#15-051-368-335-00 located at 419 E. Lincoln St. Boyne City, MI 49712

To Whom it May Concern,

Upon reviewing the above Notice, I would like to express my view with the above case's requests. Haggard's Plumbing & Heating is not 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 to either build and/or improve their existing property, it would only help the economy continue to grow. It would prove positive for the local, county and state to do all we can to improve and promote growth in any ways possible.



Sincerely,

JOHN HAGGARD

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **David & Marcella Hill
419 E. Lincoln St.
Boyne City, MI 49712**

HEARING DATE: **September 3, 2019**

PROPERTY DESCRIPTION

Property Description: 15-051-368-335-00
CITY OF BOYNE CITY, NICHOLLS & MORGANS THIRD ADDITION TO SOUTH BOYNE LOT
335 BLK 21.

The subject parcel is located at 419 E. Lincoln St. Boyne City, MI 49712. The property is owned by David & Marcella Hill and located in the Traditional Residential District.

APPLICATION

Describe Variance Requests: The application shows a request for a two inch (2”) side yard setback, or four feet ten inches (4’ 10”) of relief from the required minimum five foot (5’) setback from the side lot line.

**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 3, 2019** 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 David & Marcella Hill.
2. The property identification number is 15-051-368-335-00.
3. The property is in the Traditional Residential District (TRD).
4. Access to the property is provided by E. Lincoln St. which is a public road that bounds the south side of the parcel.
5. The adjacent properties to the north, south, east and west are zoned TRD.
6. David & Marcella Hill own the property adjacent to the subject property at 409 E. Lincoln St.
7. The property is not irregularly shaped.
8. The topography of the property is gradually sloping from south to north on most of the property, then steeper on the far northern portion.
9. The property is approximately 11,434 sq. ft. in size.
10. The minimum lot area in the TRD is 5,445 sq. ft.
- 11.
- 12.
- 13.
- 14.

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.

Motion by _____, seconded by _____ to recommend

Roll Call:

Aye:

Nay:

Abstain:

Absent:

Vacancy:

Motion

Date: 09-03-2019

Chairperson signature on the original handwritten copy

Zoning Board of Appeals

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.