

**Meeting Of  
September 5, 2017**

Record of the proceedings of the regular Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 319 N. Lake Street, on Tuesday, September 5, 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, Lynn Murray and Roger Reynolds  
Absent: None

**Meeting Attendance**

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

**Approval of the Minutes  
MOTION**

**ZBA 2017-09-05-2**  
**Carlile moved, Reynolds seconded, PASSED UNANIMOUSLY**, a motion to approve the May 2, 2017 minutes as presented.

**Hearing Citizens Present**

None

**Correspondence(s)**

None

**New Business**

Public Hearing opened at 5:01 pm

**Variance Request  
417 Bay St  
DJP Holdings LLC**

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is requesting a variance from Section 21.36 – *Accessory Buildings and Structures (A.) General Standards (3)* for the removal and replacement of an existing nonconforming deck attached to the south side of the residence, on its existing footprint and is not proposed to be expanded or enlarged from the current dimensions. Topography is steep on the northern half, sloping north to south gradually with a steep drop to the lakeshore. It is nonconforming due to the encroachment into the 35 ft. waterfront setback.

**Carlile** – When was the residence purchased, is it your primary residence, and was the deck there when you bought it?

**Debbie Poole** - Early 70's, it is not my principle residence, and a portion of the deck was there when my parents purchased the home, the deck was extended in the early 70's. There is no intention to put any sheds or other structures on the deck. We want to change what is currently there because it is unsafe and have no plans to increase the size.

**Reynolds** – Read section 21.42 Restoration of Unsafe Buildings. Questioned if the board had any jurisdiction with the repair of the deck.

**Kilkenny** – General repair and maintenance is acceptable with regards to this section, however, complete removal and replacement of a non-conforming structure is why we are here tonight.

**Reynolds** – If they do the repair in sections, we wouldn't be involved right?

**Kilkenny** – The indication from the applicant is that a complete removal and replacement of the deck is what they are requesting.

**Reynolds** – Are you going to do all at once, or will you be doing it in sections?

**Applicant's contractor** – the whole deck will need to be removed and replaced, however, we will utilize the same pads that are already there.

Public Hearing closed at 5:12 pm

Board Deliberation

**McClore** - Citing section 26.25 (D) requires conformity if greater than 50 percent is replaced.

**Murray** - that peaked my interest also, if you designed a 10% reduction in the deck area, you could bring it within conformity.

**Carlile** - Were you informed that it was a nonconforming deck and did you build any of it?

**Poole** - We put on the portion of the deck that goes out

**Murray** - In 1992 the deck was nonconforming and that was when they could make the determination of which side was the front or the back.

With no further discussion, Kubesh facilitated the discussion on the General Findings of Fact 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.

*Negative - the applicants have proposed a complete removal and replacement of the deck, so it must be brought back into conformity.*

Because the answer to question #1 was not in the affirmative, the board did not go through the remainder of the questions, as all 5 answers must be in the affirmative.

**Motion by Reynolds, seconded by McClore** to deny the request of DJP Holdings LLC as submitted on the grounds of their requested rebuild as proposed would be in violation of the zoning laws.

**MOTION**

2017-09-05-5A.

Roll Call

Ayes: Kubesh, McClore, Reynolds

Nays: Carlile and Murray

Abstain: None

Absent: None

*Motion Carries*

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Public Hearing opened at 5:32 pm

**Variance Request  
816 Lower Lake Dr.  
Sally Kemp**

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is requesting a variance from Section 21.36 - *Accessory Buildings and Structures (A.) General Standards (3)* for the addition of an attached 15'x 16' car port on the front of the home, and the removal of an existing 5.3'x 20.5' covered porch and replacement with a 8' x 20.5' 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.

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. 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.

Assistant Zoning Administrator Kilkenny had a phone call in support from Lois Thornberry, a neighbor.

**McClore** – Is there any problems with 40% of the front yard being concrete with the new driveway?

**Kilkenny** – In the WRD; 30% of the total lot can be covered with buildings to account for the impervious surface, I do not believe that driveways are included in that amount. 40% of the front yard can be covered with inorganic materials.

**Carlile** – Am I correct that there are no impediments?

**Kemp** – The impediments are the existing drive, there is only 10 ft from the house to the edge and less than that in some spots due to a gas meter and hole, I am not sure how I will get a snowplow to clean this winter. I did not initially envision the improvements that I have come forward with, but hoped there would be some area to put up a carport to keep the snow from the car this winter. When I purchased the property in June of this year, the rocks were not at the property line at that time. I had a carpenter assist in making the plans aesthetically pleasing. Due to people using the adjacent land for parking without permission, the adjacent property owner placed rocks, on their property, anywhere from 6 to 8 inches off of the property line.

**Kevin Klevorn: neighbor** - what is the distance from the house towards my property to the south? The carport shows 15 ft, but does not show any distance past the residence? **Murray** 8' 2" is what I came up with.

**Kemp** – The posts will be just past the house, and the roof will be an additional foot or two,

**Kilkenny** – The requirement is 5 ft past the drip edge.

**Reynolds** - The residence is already encroaching into the setback by 17.5 ft. and you are requesting an additional 10 ft. that is getting really close to the road, can't see how that would allow us to not follow the zoning laws.

**McClore** – Sometimes we are able to grant variances, depending on the individual circumstances.

With no further comments, public hearing closed at 5:56 pm

With no further discussion, Kubesh facilitated the discussion on the General Findings of Fact and then moved onto the Findings of Fact under Section 24.80

The board had concerns that they were being asked to extend a current nonconformity by granting the variance. According to the homeowner, there is usage value in the present situation, however, wanted to put up a carport and extend the front porch. Safety concerns for the general public were also brought up because of the requested variance.

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*Negative – the applicant indicated that there was usage with the current nonconformity, however, wanted additional space on the front porch and to put up a carport; so is not unnecessarily burdensome.*

Because the answer to question #1 was not in the affirmative, the board did not go through the remainder of the questions, as all 5 answers must be in the affirmative.

**MOTION**

**Motion by McClorey, seconded by Carlile** to adopt the General Findings of Fact reaching a conclusion that the Findings of Fact under Section 24.80 has not met the requirements.

2017-09-05-5B.

Roll Call

Ayes: Carlile, Kubesh, McClorey, Murray and Reynolds

Nays: None

Abstain: None

Absent: None

*Motion Carries*

**Zoning Ordinance  
Interpretation – Section  
20.30(L)**

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. Staff is requesting an interpretation of Section 20.30(L); this 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. With board discussion, they all felt that there should be setbacks required due to public safety; and want to refer this item to the Planning Commission for their opinion and suggest a zoning ordinance amendment to clarify the intent of Section 20.30(L).

With no further discussion, **motion by Carlile, seconded by Murray** to refer this item back to the Planning Commission for clarification on the intent of Section 20.30(L) with suggestion from the ZBA that there is some sort of setback for accessory structures on a public alley.

2017-09-05-5C.

Roll Call

Ayes: Carlile, Kubesh, McClorey, Murray and Reynolds

Nays: None

Abstain: None

Absent: None

*Motion Carries*

It will be a minimum of 60 days for this to run through the amendment process and then a codification will need to be done on the Zoning Ordinance.

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

None

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**Good of the Order**

None

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**Announcements**

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for October 3, 2017 at 5:00 p.m.

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**Adjournment  
MOTION**

**ZBA 2017-09-05-10**

**Murray moved, McClorey seconded, PASSED UNANIMOUSLY** a motion to adjourn the Tuesday, May 2, 2017 Boyne City Zoning Board of Appeals meeting at 6:19 p.m.

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Patrick Kubesh, Chair

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Pat Haver, Recording Secretary

*DRAFT*