

**Meeting Of  
December 4, 2012**

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, December 4, 2012 at 5:00 p.m.

**Call To Order**

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

**Roll Call**

Present: Bob Carlile, Pat Kubesh, John McClorey, Lynn Murray and Roger Reynolds  
Absent: None

**Meeting Attendance**

City Officials/Staff: Planning Director Scott McPherson and Recording Secretary  
Pat Haver  
Public Present: Five

**Approval of the Minutes  
MOTION**

**ZBA 2012-12-4-2**  
**Carlile moved, McClorey seconded, PASSED UNANIMOUSLY** a motion to approve the August 7, 2012 minutes as presented.

**Hearing Citizens Present**

None

**Correspondence(s)**

None

**New Business**

**Roof Pitch Variance request  
for 515 Lewis St.**

Chair Kubesh excused himself from the posted hearing, as he has investigated the possibility of purchasing the property for an investment prior to the agenda packets arriving. Turned the meeting over to Vice Chair Carlile, and left the meeting at 5:03 pm.

Planning Director McPherson reviewed his staff report that was included in the agenda packets. The lot located at 515 Lewis St for many years had a nonconforming dwelling and a detached accessory building. The nonconformity of the building was that it was less than 24' in width, and the roof pitch was less than the required 5/12. The dwelling was removed in the summer of 2012; however the accessory structure remains so now the use of the lot is nonconforming. The applicants are investigating the possibility of moving a structure from one location within the city limits to this lot. The dwelling is approximately a 24' x 36' modular home with a roof pitch less than 5/12. No plot plan was included with the application, so the assumption is that the building would be set on the lot in accordance with all of the other ordinance requirements for the Traditional Residential Zoning District (TRD). The roof pitch is the only item being requested for a variance.

**Carlile** - What would be the reason for a 5/12 pitch for the roof; drainage issue, cosmetic issue?

**McPherson** - This requirement was prior to my coming on board, so am not sure what the reasoning or rationale is behind it, I can only assume it is aesthetics.

**Chris Christensen: Local realtor** - Some private associations or developments put in a 5/12 pitch requirement to discourage mobile homes without disallowing them.

Public Hearing opened at 5:06 pm

**William Church: Current owner of the house to be moved** - My wife and I purchased the home that is very close to my house after the last owner fell on hard times, it will allow us to have some space and to improve both neighborhoods.

**Christensen** - The house has been on the market for over 430 days, the downfall seems to be the 5/12 roof pitch requirement when moved.

**Alfred (Mike) Stark: Owner of 515 Lewis St.** - Have owned this property for 10 - 12 years. My original renter was under Section 8, my last renter passed away last year. Moved the existing trailer out this past summer.

**Christensen** - The front door of the residence when it is moved will be turned to face the road. Manufactured homes are approved by the government and must be built to certain codes and structures, this is the first time I've heard of a municipality which has any type of restrictions, other than square footage and lot line setbacks.

**Michael Dell** - My wife and I have driven on Lewis Street, there appears to be 19 or so homes that have the same roof pitch as the house we want to move, it would be a great improvement to the community than what was there. Want to put in something compatible to the existing community.

**Christensen** - You need to look at affordable housing issues, it is close to the schools, and it is desirable to families. With this requirement is it a form of exclusionary zoning?

**Carlile** - Will this become your principal residence?

**Dell** - No investment property

**Reynolds** - What is the current roof pitch of the house to be moved?

**Dell** - 3 ½ /12

**Carlile** - What are your plans for the adjacent building in the back keep, renovate or demolish?

**Dell** - Based on what I saw, remove it.

Public hearing closed at 5:17 pm

#### Board Deliberation

Director McPherson read from the draft findings of fact included in the agenda packet, and the board deliberated each point individually, with their answers to the findings of fact below:

### **GENERAL FINDINGS OF FACT**

1. The property is owned by the applicant, Alfred Stark.
2. The property is in the Traditional Residential Zoning District (TRD).
3. The property is located a 515 Lewis Street
4. The property dimensions are 66' x 201' and it has an area 13,266 square feet.
5. The minimum lot width for a lot in the TRD is 50' and the minimum area is 5,445
6. The property had a nonconforming dwelling and a detached accessory building on the property.
7. The nonconforming dwelling was removed in the summer of 2012.
8. Nonconforming structures are regulated by BCZO Section 26.25 which is as follows:

#### ***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.
9. The property is currently nonconforming due to the fact that there is an accessory structure on the property without a primary structure.
10. The applicant desires to relocate a single family dwelling currently located at 935 Wilson Street to the property.
11. The existing dwelling located at 935 Wilson is 24' x 36' and has a ground floor area of 864 square feet.
12. The minimum width for a dwelling in the TRD is 24' and minimum floor area is 672 square feet
13. The roof pitch on the existing dwelling is less than 5/12.
14. The minimum roof pitch for a dwelling in the TRD is 5/12 as per BCZO Section 4.40(A)(6) which is as follows:

*The minimum pitch of the roof of any building shall be five to twelve (5:12) and the maximum pitch of the roof of any building shall be twelve to twelve (12:12), except that additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed twenty-four to twelve (24:12) and the roof pitch of a covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second story deck.*
15. Several existing dwellings located near 515 Lewis Street have roofs with less 5/12 pitch.

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

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

1. Requiring the owner to comply with the regulations governing area, setbacks, frontage, height, bulk, density or other non-use requirements would unreasonably prevent the owner from using the property for a permitted purpose, or would render

conformity with such regulations unnecessarily burdensome. *Two board members felt that it was unreasonably burdensome to require the 5/12 pitch on a house that will be moved to this lot from another location within the city. Two board members felt that it was not unreasonably burdensome as that is an established requirement of the district and would create an additional nonconformity, if granted.*

2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *The board agrees this is the smallest variance necessary.*
3. The variance can be granted in such a fashion that the spirit of the Ordinance will be observed and public safety and welfare secured. *Two board members felt by granting the requested variance, the spirit of the ordinance would be observed, while the other two board members felt the variance does not meet the letter or spirit of the ordinance.*
4. The need for the variance is not self created. *Two board members felt that the need for the variance is self created, and two board members felt that the variance was 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. *Board members felt that there were not any unique circumstances of the property. As stated earlier, it is a legal conforming city lot with a width measuring 66', with a minimum width requirement in the TRD district of 50'.*

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 Reynolds** to grant the roof pitch variance.

### **ZBA 2012-12-4-5A**

#### **Roll Call:**

Ayes: Carlile and Reynolds

Nays: McClorey and Murray

Abstain: Kubesh

Absent: None

*Motion fails*

The meeting was turned back over to Chair Kubesh, who returned at 6:03 pm

## **Adoption of the 2013 meeting calendar**

### **ZBA 2012-12-4-5B**

**Motion by McClorey, seconded by Murray, PASSED UNANIMOUSLY**, to adopt the 2013 meeting calendar as presented with moving the January meeting from the 1<sup>st</sup> to the 8<sup>th</sup>.

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

None

## **Good of the Order Announcements**

Leslie Myers has been hired as the Assistant Planning Director, starting on the 19<sup>th</sup> of December, and will be support staff to the ZBA.

**Next Meeting**

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for January 8, 2013 at 5:00 p.m.

**Adjournment  
MOTION**

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**ZBA 2012-12-4-10**

**Carlile moved, McClorey seconded, PASSED UNANIMOUSLY** a motion to adjourn the Tuesday, December 7, 2012 Boyne City Zoning Board of Appeals meeting at 6:08 p.m.

*Pat Haver*

Pat Haver, Recording Secretary

*Pat Kubesh*

Pat Kubesh, Chair

*Robert Carlile* *Vice Chair*

Robert Carlile, Vice Chair