

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, November 5, 2013
5:00 P.M.
Boyne City Commission Chambers, City Hall

1. CALL TO ORDER AND ROLL CALL
Excuse Absences
2. APPROVAL OF MINUTES – October 1, 2013
3. HEARING CITIZENS PRESENT (on non-agenda items)
4. CORRESPONDENCE
5. NEW BUSINESS
 - A. Variance Request 709 Lake Park Drive
6. OLD BUSINESS
 - A. None
7. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES
8. GOOD OF THE ORDER
9. ANNOUNCEMENTS
10. ADJOURNMENT



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click on Boards & Commissions

Next meeting December 3, 2013

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**Meeting Of
October 1, 2013**

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, October 1, 2013 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 Director Annie Doyle and Recording Secretary Pat Hayer
Public Present: One

**Approval of the Minutes
MOTION**

Carlile moved, McClorey seconded a motion to approve the August 6, 2013 minutes as presented.

ZBA 2013-10-01-2

Roll Call

Ayes: Carlile, McClorey, Murray and Reynolds

Nays: None

Absent: None

Abstain: Kubesh

Motion carries

Hearing Citizens Present

None

Correspondence(s)

None

New Business

Public hearing opened at 5:02 pm

Variance Request

513 Bay St.

Richard & Marva Cronk

Assistant Planning Director Doyle reviewed her staff report that was included in the agenda packet. The applicants Richard and Marva Cronk are requesting a rear yard setback variance of 13.2' to allow for a 6' x 12' addition to their existing primary structure in the NE corner of the residence. The addition will be an extension of an existing bathroom, allowing room for construction of a new walk in shower. It runs parallel to an existing variance, and will not be any closer to the roadbed or the lines.

Kubesh - This board has defined the setback as drip line. Is this variance from the foundation or the drip line?

Michael Skop, building contractor for applicant - The drip line. It is exactly as the existing house 1.8' drip line, no changes. The applicants would like to add this shower to the master bathroom on the main floor, due to medical reasons and physical limitations to use the second floor bathroom shower.

With no further comments, public hearing was closed at 5:07 pm

Board Discussion

Murray - Would like to make sure that the end of Mechanic Street is a public access or not.

Kubesh - Unknown, photos look like there maybe an access.

Murray - I just want to make sure the owners know of a possible encroachment onto possible public access, and the neighbor's deck appears to encroach already. I would not like to see the public access closed off or lost by the citizens of the city.

Doyle - They are not encroaching on this side, or they would be asking for a variance for that.

Carlile - Is this a year round residence for the Cronk's?

Skop - Summer residence

Assistant Planning Director Doyle went through the findings of fact, listed below:

GENERAL FINDINGS OF FACT

1. The property is owned by Richard and Marva Cronk
2. The applicant proposes an expansion on the house encroaching on the required rear yard setback.
3. The property is in the Waterfront Residential Zoning District
4. The existing structure was built in 1988 and expanded in 1990 on valid permits and was given two variances in 2010 as a result of the unique topography.
5. The property has meandering lake frontage, making the west portion of the property narrower than the east portion.
6. The property has areas of steep slope.
7. The lake frontage greatly reduces the buildable area of the lot.
8. *16,888 square feet is the size of the lot*
9. *The WRD requirements have a 15 ft. rear set back*
10. *Medical necessity and physical limitations of the owners requires a walk in shower on the first floor for safe access*

The board now went through section 27.45 for non-use variances

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 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.
 - A. *Affirmative - Medical necessity of owners requires a first floor shower facility*
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
 - A. *Affirmative - 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.
 - A. *Affirmative*
4. The need for the variance is not self created.
 - A. *Affirmative*
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.
 - A. *Affirmative - The steep slopes, contours and meandering lake frontage are unique circumstances of this 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

With no further board discussion, **motion by Murray, seconded by Carlile** to approve the variance as requested for a rear yard setback variance of 13.2 ft to allow for a 6 ft by 12 ft. addition to their structure, with a stipulation of no encroachment into public access, if there is one.

ZBA 2013-10-01-5A

Roll Call

Ayes: Carlile, Kubesh, McClorey, Murray and Reynolds

Nays: None

Absent: None

Motion carries

Old Business

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

None

**Good of the Order
Announcements**

- Kirtland has applied for an adjustment on their DEQ permit. They will accept public comments and then hold a public hearing on November 13, 2013.
- The city has filed a motion for reconsideration on Judge Pajtas' decision on Kirtland.
- Dilworth is moving forward with a new owner and development group.
- Devlon - Nothing new

Next Meeting

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

**Adjournment
MOTION**

ZBA 2013-10-01-10

Carlile moved, Murray seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, October 1, 2013 Boyne City Zoning Board of Appeals meeting at 5:28 p.m.

Patrick Kubesh, Chair

Pat Haver, Recording Secretary

City of Boyne City



To: Members of the Zoning Board of Appeals
From: Annie Doyle, Assistant Planner
Date: October 28, 2013
Subject: Variance Request at 709 Lake Park Drive

Background

The applicants, Chris and Lisa Montague, own an existing home at 709 Lake Park Drive in the Harborage Park condominium (PID: 015-051-498-031-00). The lot size is typical for the condominium and not irregularly shaped. The property is in the Traditional Residential District (TRD).

All the land surrounding the property is part of the Harborage Park condominium. The property is bounded on the front by Lake Park Drive, a public road; a single-family dwelling to the east; a dedicated open space serving as a park to the west and another dedicated open space to the rear. The original zoning permit for the construction of the property’s primary dwelling and accessory building (garage) was issued in July 1999.

	Front	Rear	Sides	Accessory Building	Lot Width	Lot Area
TRD requirements	10 ft	15 ft	5 ft (minimum) 15 ft (total)	3 ft (minimum side and rear setback if in rear of property)	50 ft	5,445 SF
709 Lake Park Drive	11 ft	60 ft (approx)	5 ft (west) 14.8 ft (east) 19.8 ft (total)	3.9 ft (east side setback) 48 ft (approx. rear setback)	62.79 ft	8,655 SF (approx.)

Request

The applicants are requesting a one (1) ft variance from the side yard setback requirement of 5 ft. The application states the purpose of this request is to allow for the construction of a 14 ft x 16 ft bump-out on the west side of the residence according to site plan drawings.

Other factors to Consider

Current Zoning Permit

Construction on the 14ft x 16 ft bump out is currently underway and is part of an already approved larger remodeling project.

On August 15, 2013, a zoning permit application was approved for this remodeling project on the property's residential structure which included two porches, a fire escape and the construction of a 14ft x 16ft bump-out on the west side. The approved site plan depicted a 5 ft setback on the proposed 14 ft x 16 ft bump-out.

The construction on the approved remodeling project began after the permit was issued and the applicant's are now requesting a variance from the approved site plan measured from the eave or closest point on the residential structure.

Previous Variance Request Denied

In November 1999, a zoning variance application was denied requesting a zero (0) ft lot line setback for the property's accessory building. The basis for the denial was the proposed structure was contrary to public interest and the spirit/intent of the ordinance; would cause adverse effect to properties in the vicinity and no exceptional circumstances or conditions applied to the request.

Land Surveys

The Harborage Park condominium went through several site plan amendments since 1999, resulting in lot configuration changes to many of the condominium properties. The survey conducted by Benchmark Engineering, Inc., dated October 24, 2013, is representative of this property's current lot configuration and was used to calculate the setbacks and measurements provided in this report.

Summary

The applicants are requesting a one (1) ft variance from the side yard set back requirement of 5 ft for the eave of a 14 ft x 16 ft addition to the property's residential structure. The west side yard is adjacent to a dedicated open space for the Harborage Park condominium. The side yard setbacks for the existing primary dwelling as represented in the October 24, 2013 survey are 5 ft (west) and 14.8 ft (east), for a combined total of 19.8 ft. With the requested variance, the side yard setbacks of the residential structure would have a combined total of 18.8 ft.

Application of Standards

The ZBA should review the enclosed information, visit the property, and apply the standards in Section 27.45.

Exhibits:

- A. Zoning Board of Appeals Application
- B. Zoning Permit (August 15, 2013) and letter submitted by applicant
- C. Land Survey (October 24, 2013)
- D. Aerial photo of property
- E. Photos of current construction (taken October 28, 2013)
 - a. Front view
 - b. Side view and rear view
- F. Site plan drawings of proposed construction (from August 15, 2013 Zoning Permit)
 - a. Front and side view
 - b. Rear View
- G. The Harborage Park condominium site drawing
- H. Template for 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: Chris and Lisa Montague
Address: 460 West Deming Place 1E
Chicago, IL 60614
Phone: 231-459-4119 E-mail: chris.montague@plantemoran.com

Describe Variance Request: 14'x6' bump out to be built as drawn which the one foot overhang will encroach into the 5' set back required by city ordinance

Property Street Address: 709 Lake Park Drive - Harborage Park
Nearest Intersection: Front St.
Property Tax ID #: 051-498-031-00 Zoning District: TRD
Legal Description of Property (attach separate sheet if necessary): _____

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 Chris Montague Date 9/17/13

This is to certify the required filing fee was received on 9/17/13 and documented with receipt number 40821. This application is scheduled for public hearing on NOV. 5, 2013.
Staff Initials [Signature]

Don Weber

From: Ken Provost [kenprovost@birchwoodconstruction.net]
Sent: Tuesday, September 17, 2013 8:37 AM
To: donweber@birchwoodconstruction.net
Subject: FW: Variance Request

From: Chris Montague [mailto:Chris.Montague@plantemoran.com]
Sent: Thursday, August 22, 2013 1:52 PM
To: Ken Provost (kenprovost@birchwoodconstruction.net)
Cc: lisa.c.montague@gmail.com
Subject: FW: Variance Request

Hi Ken - See attached approval. I did get a call from a neighbor who is an attorney who indicated he might have some suggested wording changes to the submission. I'll call him back and let you know what I hear. Thanks.

Chris

Christopher B. Montague, CPA | Partner
Plante Moran, 225 W. Washington, Suite 2700, Chicago, IL 60606-3564
Direct Dial: 312.602.3561 | Mobile: 312.402.1954 | Fax: 248.233.8988
[Plante Moran](#) | [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [Blogs](#)
Celebrating 15 years as one of FORTUNE magazine's "100 Best Companies to Work For"
Please consider the environment before printing this email.

From: Michael Sheean [mailto:m_sheean@yahoo.com]
Sent: Thursday, August 22, 2013 12:43 PM
To: Chris Montague
Subject: Re: Variance Request

Chris,

The Architectural Review Committee of the Harborage Park Association approves your variance request.

Michael

From: Chris Montague <Chris.Montague@plantemoran.com>
To: "m_sheean@yahoo.com" <m_sheean@yahoo.com>
Cc: "lisa.c.montague@gmail.com" <lisa.c.montague@gmail.com>
Sent: Wednesday, August 21, 2013 4:34 PM
Subject: Variance Request

Hi Mike – I have attached a variance request that I think is self-explanatory. However, please don't hesitate to let me know if you have questions or would like to discuss.

Chris

Christopher B. Montague, CPA | Partner
Plante Moran, 225 W. Washington, Suite 2700, Chicago, IL 60606-3564
Direct Dial: 312.602.3561 | Mobile: 312.402.1954 | Fax: 248.233.8988
[Plante Moran](#) | [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [Blogs](#)

The Harborage
800 Front Street
Boyne City, MI 49712
Director of Rules, Regulations, and Architectural Chair

RE: Area Variance Request

August 21, 2013

Dear Eric Rosekrans;

We are currently planning an extensive upgrade on our residence located at 709 Lake Park Drive in the Harborage Park Community Lot # 31. To the west of our home adjoins the communal park for the Harborage. I am requesting that my 14' x 6' bump out be built as drawn which the one foot overhang will encroach into the 5' set back required by city ordinance.

Since the property we will be encroaching in is considered a park, the overhang will not influence any water runoff or be detrimental to views for any neighbors since no one will build next to it since it is on the communal park property.

In requesting an area variance, the State law requires the ZBA considers the following items when determining the application for variance.

- 1) No burden to health, safety, and welfare of the community. NONE
- 2) The benefit sought by us can be achieved by some method, which is feasible without requiring a variance. WITH YOUR APPROVAL A VARIANCE SHOULD BE APPROVED
- 3) The requested area of variance is substantial. ONLY ONE FOOT OF AREA AFFECTED
- 4) The proposed variance will an adverse impact on the physical or environmental conditions of the community. NONE
- 5) In addition, if there is difficulty in self created the changes. NONE

We hope you approve our request to build the one-foot overhang into the communal park area.

We would like to thank you for your time and consideration on this matter.

Sincerely



CITY OF BOYNE CITY
319 N. Lake Street
Boyne City, MI 49712
www.boyneclty.com

ZONING PERMIT APPLICATION

PERMIT NUMBER 2013-18

- Project Address 709 Lake Park Drive- Harborage Park.
- Property ID Number (Tax Code Number) 15-051-498-031-00
- Property Owner Chris and Lisa Montague Phone 231-459-4119
- Address 440 West Deming Place 1E
- City Chicago State ILL Zip 60614
- Contractor Birchwood Construction Co. Phone 231-439-1600
- Address 8920 Maeller Drive
- City Harbor Springs State Michigan Zip 49740

Proposed Use Residential

Area of Lot (Square feet/Acres) _____ Construction Costs \$300,000

Zoning District TRD City of Boyne City, Charlevoix County

Has a variance been granted for the proposed work? yes ___ no X If so, what is file #? _____

Applicant: The information provided is accurate to the best of my knowledge. I certify that all property and corners have been clearly staked and flagged and that all construction will conform with the Boyne City Zoning Ordinance and with the description contained in the application and site plan. All materials included with this application hereby become part of this application. Furthermore, 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. Applicant/landowner shall be responsible for movement of footing placement when not found in conformance with property zoning and/or required setbacks from the roads and property boundaries.

Signature of Applicant: *Danield L. Wilson* Date: 8/6/2013

Signature of Property Owner: *Christopher B. Montague* Date: 8/9/2013

This is to certify the required permit fee was received on 8/15/13

Receipt Number: 44804

Approved: Yes No

[Signature]
Signature of Zoning Administrator:

NOTES:

LAKE PARK DRIVE

N 81° 18' 05" E

62.80'

29' WIDE UTILITY

EASEMENT

101.34'

PROPOSED ADDITION

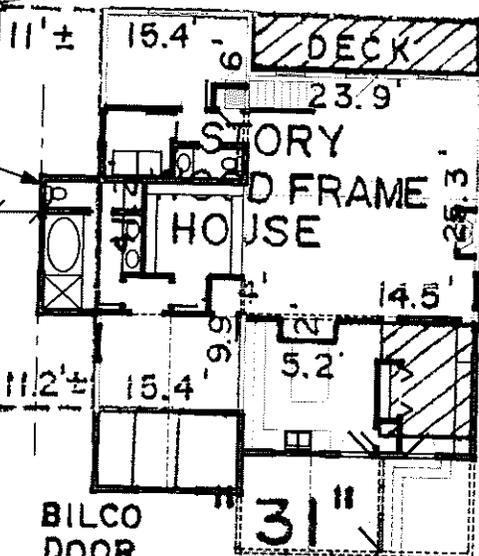
-5" setback measured from eave or closest point on structure

8/15/13

[Signature]

N 1° 04' 08" E

5'-0"



CONC DRIVE

S 1° 04' 08" W 113.56'

" 32 "

3.1' ± ENCROACHMENT

GARAGE (12.3' x 22.2')

22.2'

3.2' ±

62.04'

N 88° 51' 05" W

20' COMMON AREA

NOTE: SITE INFORMATION TAKEN FROM THE 'CERTIFICATE OF MORTGAGE INSPECTION' PRODUCED BY FERGUSON & CHAMBERLAIN ASSOC., INC., PROFESSIONAL SURVEYORS, DATED 06/05/00

8/14/2013

Montague

Site Layout

EDGEWATER DESIGN GROUP

301 E. MITCHELL STREET PETOSKEY, MICHIGAN 49770 (231) 348-0497

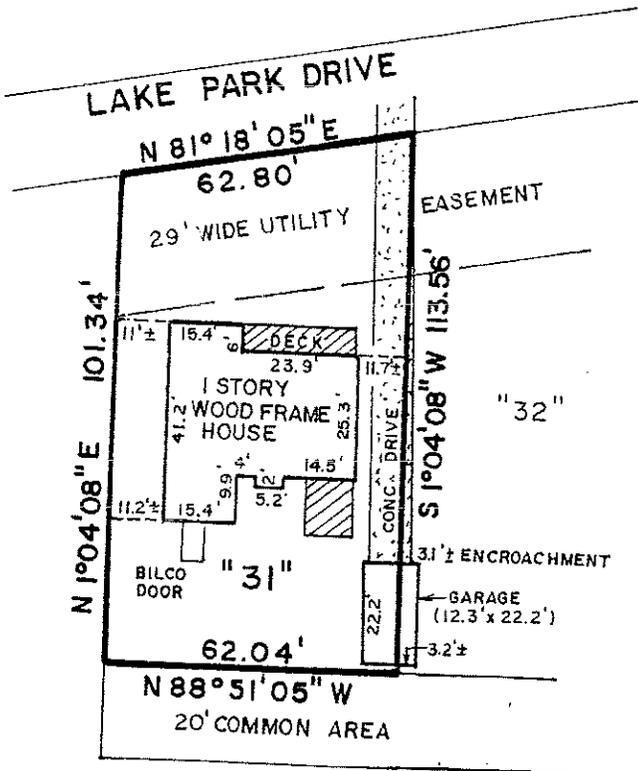
THIS DRAWING IS CONSIDERED PROPRIETARY PRODUCT OF EDGEWATER DESIGN GROUP, LLC. IT IS NOT TO BE USED OR REPRODUCED IN ANY MANNER UNLESS AUTHORIZED IN WRITING BY EDGEWATER DESIGN GROUP, LLC.

CERTIFICATE OF MORTGAGE INSPECTION

CERTIFIED TO: CITIZENS BANK
328 S. Saginaw Street
Flint, Michigan 48502, and
NORTHERN MICHIGAN TITLE CO.
P.O. Box 175
Charlevoix, Michigan 49720
DATE: June 5, 2000



0 5' 10' 20' 40'
SCALE: 1" = 40'



UNIT 31, HARBORAGE PARK CONDOMINIUM (CITY OF BOYNE CITY, CHARLEVOIX COUNTY)

PROPERTY DESCRIPTION: Land located in the City of Boyne City, County of Charlevoix, State of Michigan described as:

Unit 31, HARBORAGE PARK CONDOMINIUM, according to the Master Deed recorded thereof in Liber 364, Page 655 thru 728, Charlevoix County Records and First Amendment to Master Deed, recorded in Liber 368, Page 69, Charlevoix County Records, and further amended in Second Amendment to Master Deed as recorded in Liber 370, Page 365, Charlevoix County Records, and designated as Charlevoix County Subdivision Plan No. 85. Together with rights in general common elements and limited common elements as set forth in the above Master Deed, and as described in Act 59 of the Public Acts of 1978, as amended.

TOGETHER WITH a revocable, non-exclusive easement over, across and through the Pointe Parcel as set forth in Easement Agreement recorded October 26, 1995 in Liber 364, Page 649, Charlevoix County Records.

ALSO TOGETHER WITH a non-exclusive easement to be used for recreational purposes as set forth in Fifth Amendment to Master Deed of the Harborage Condominium, recorded in Liber 361, Page 797, Charlevoix County Records.



SUBJECT to any Easements, Reservations, or Restrictions of record, or any other facts that may be disclosed by an accurate and current title search. Eaves, fences, landscaping and utility lines are not shown, unless specifically requested. Precise setbacks are subject to survey.

John E. Ferguson, P.S. No. 24595

I HEREBY CERTIFY that I have inspected the location of the buildings with respect to the property description hereon described; that there are no visible encroachments except as noted.

FERGUSON & CHAMBERLAIN ASSOCIATES, INC.

PROFESSIONAL SURVEYORS

103 W. UPRIGHT STREET - CHARLEVOIX, MICHIGAN 49720

(231) 547-6882 - FAX (231) 547-0021

EMAIL: survey@freeway.net

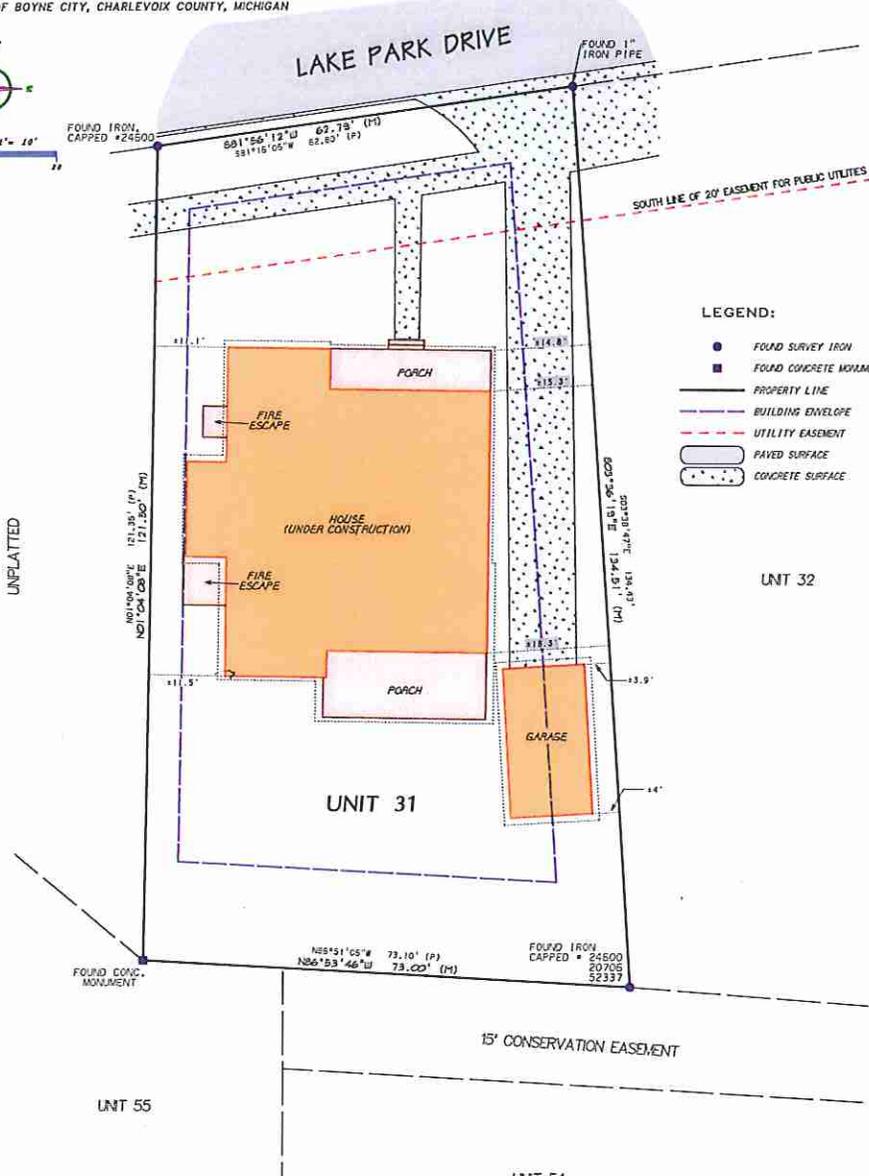
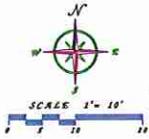
BOUNDARY & LOCATION SURVEY

UNIT 31, HARBORAGE PARK

SECTION 34, T33N, R5W
CITY OF BOYNE CITY, CHARLEVOIX COUNTY, MICHIGAN

ZONING REQUIREMENTS
VERIFY WITH LOCAL ZONING OFFICE

ZONING DISTRICT = T3D
MINIMUM SIDE WIDTH = 50'
MINIMUM LOT AREA = 5,445 SQFT
SETBACKS: FRONT = 10'
REAR = 10'
SIDE = MINIMUM 5'-TOTAL OF 15'



LEGEND:

- FOUND SURVEY IRON
- FOUND CONCRETE MONUMENT
- PROPERTY LINE
- - - BUILDING ENVELOPE
- - - UTILITY EASEMENT
- ▭ PAVED SURFACE
- ▨ CONCRETE SURFACE

UNPLATTED

UNIT 32

UNIT 31

UNIT 55

UNIT 54

NOTES:

The property description was furnished, and no check of title relative to ownership, liens, encumbrances or occupation has been performed as part of this plat.

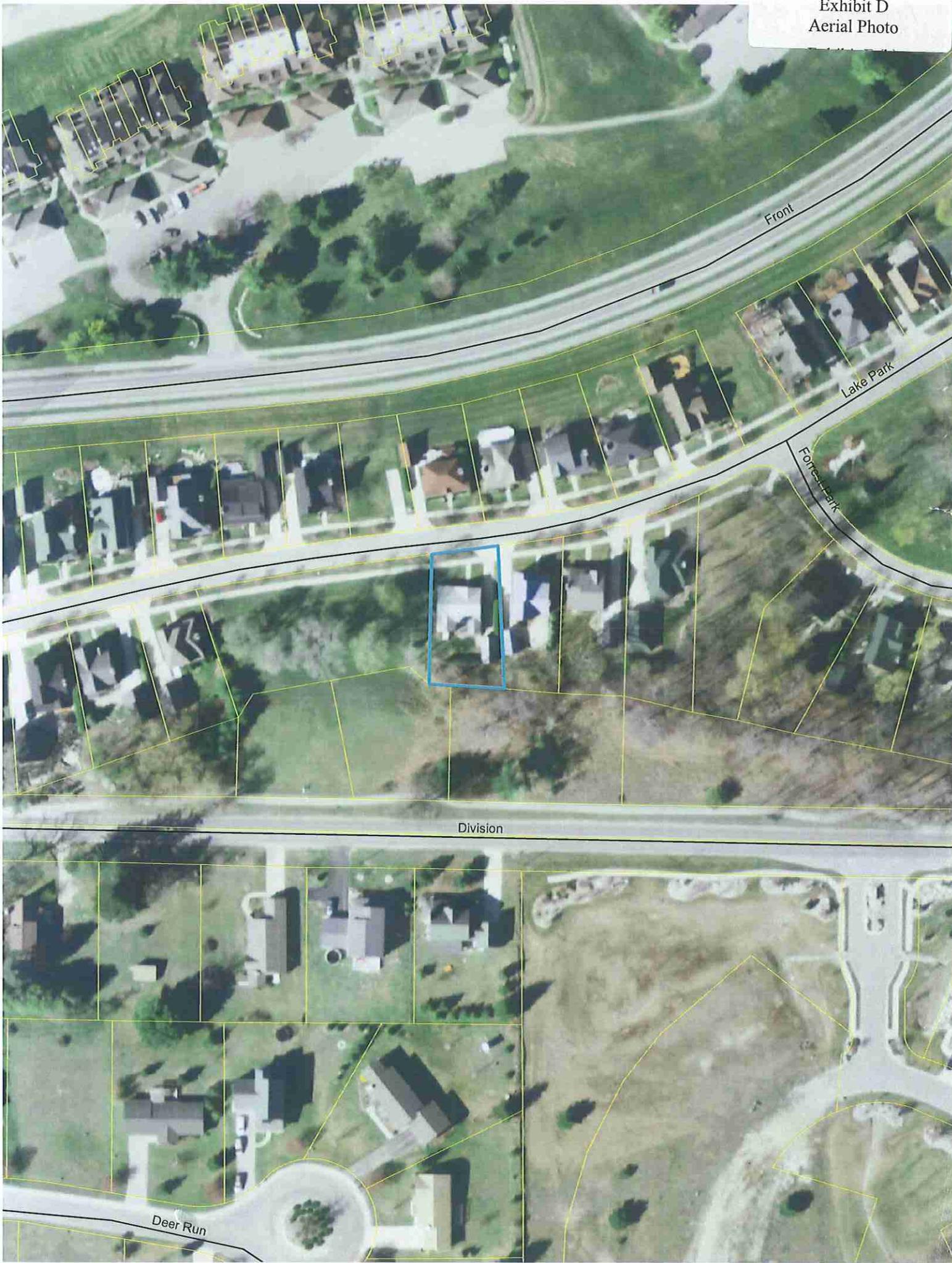
Drawings and dimensions shown on this drawing are based off of Harborage Park Exhibit D Drawings, Replat No. 4 as recorded in Charlevoix County Records as Condominium Subdivision Plan No. 85.

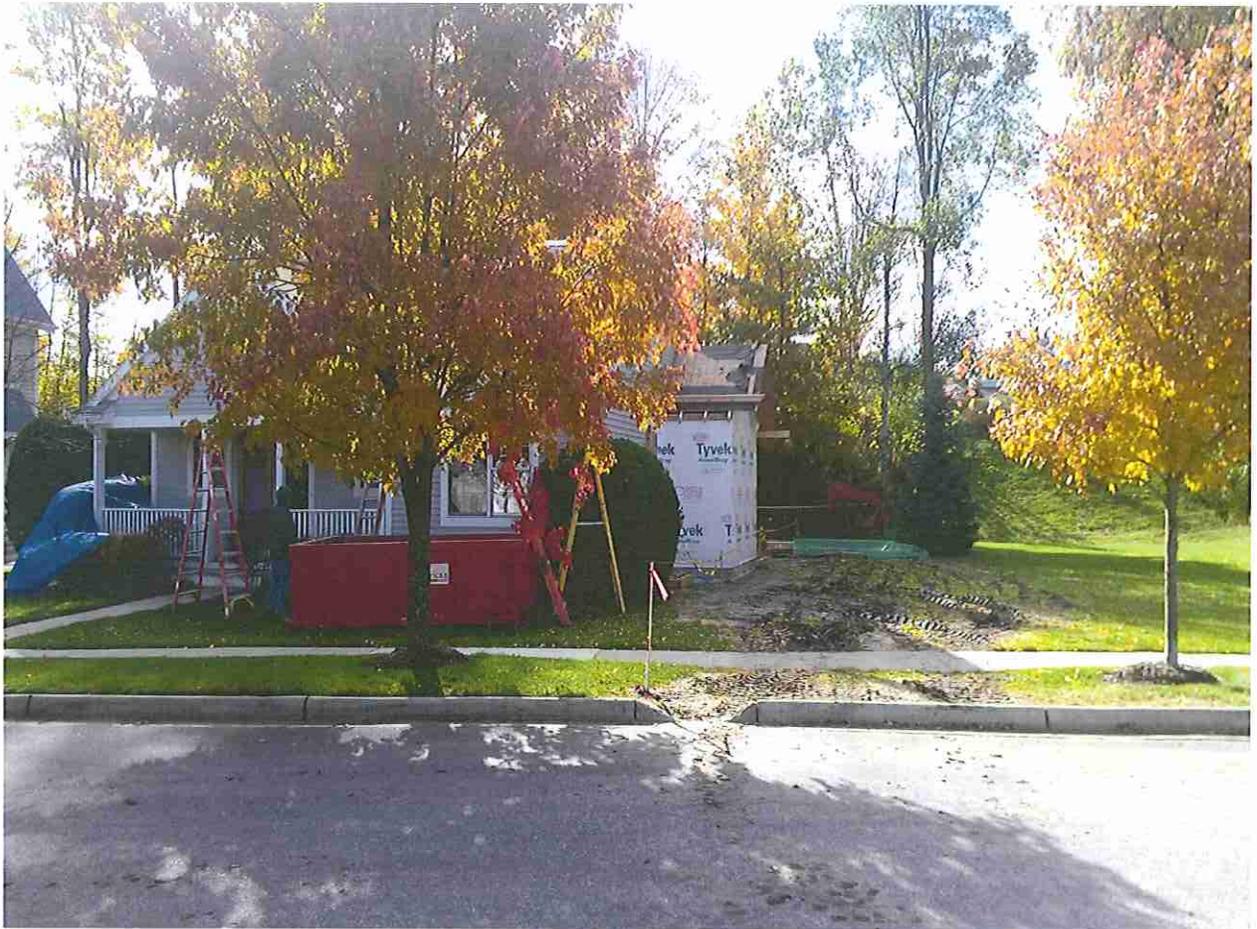
BENCHMARK ENGINEERING INC.
SURVEYORS • CIVIL ENGINEERS
827 E. LANE ST.
BOYNE CITY, MICHIGAN 49716
PHONE (231) 828-7108 FAX (231) 828-7122
benchmark4507@gmail.com

Client: BENCHMARK CONSTRUCTION
Project Mgr: A.M. HOLDSIDE
Drawn By: JLE
Field By: HOLDSIDE-EVANS
File: 131002.00
Job #: 13-382
Sheet #: 1 OF 1

Date (y-m-d)	By
24 OCTOBER, 2013	

BOUNDARY & LOCATION SURVEY
UNIT 31, HARBORAGE PARK









North Elevation
 SCALE 1/4" = 1'-0"



West Elevation
 SCALE 1/4" = 1'-0"

301 E. MICHELLS STREET
 FREDERICK, MD 21701
 (301) 330-0827
 THIS DRAWING IS UNREGISTERED
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 EDGEWATER DESIGN GROUP, INC.
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 REPRODUCED IN ANY MANNER BY
 ANY OTHER PARTY WITHOUT THE
 WRITTEN CONSENT OF EDG.

**EDGEWATER
 DESIGN GROUP**

DATE	REVISIONS:	BY	APP.
03/12/13	SCHEMATIC DESIGN REVISIONS		
05/15/13	CONCEPTUAL DESIGN DEVELOPMENT RELEASE		

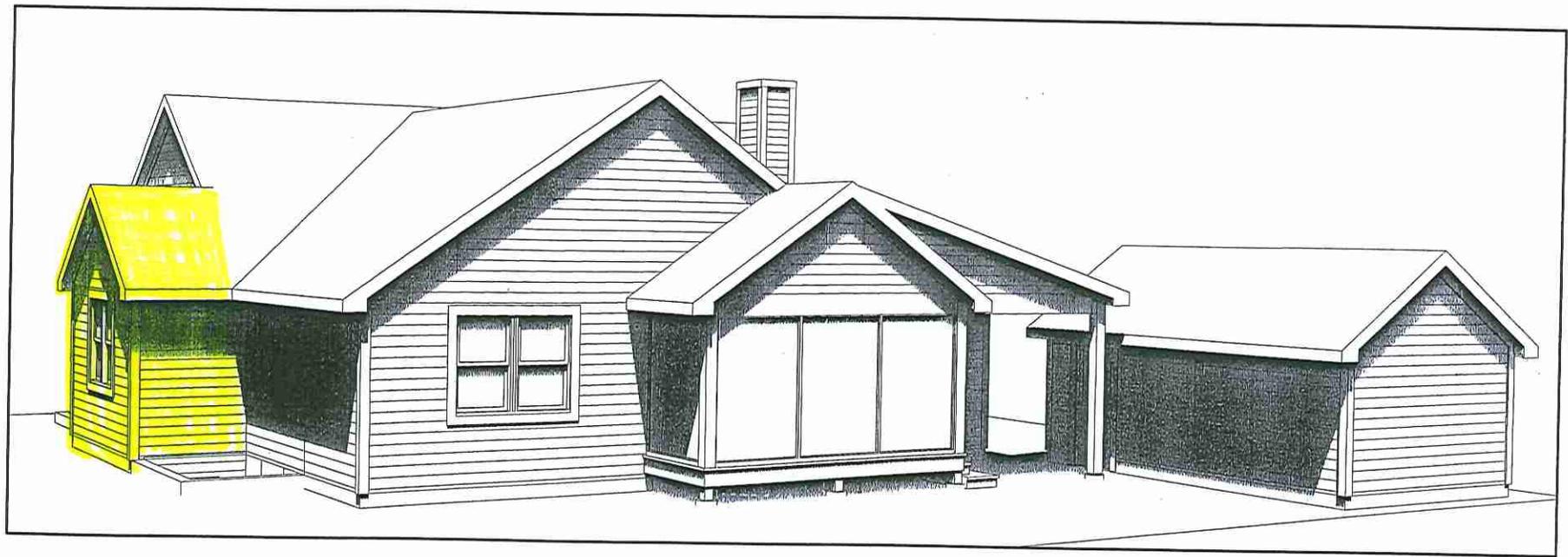
PROJECT INCLUDES/EXCLUDES FOR:
 Chris and Lisa Montague
 DRAWING NAME:
 Exterior Elevations

ARCH NO: EDG 12-37
 SCALE: AS SHOWN
 PLOTTED: 1/11/2013

SHEET:
 A2.1

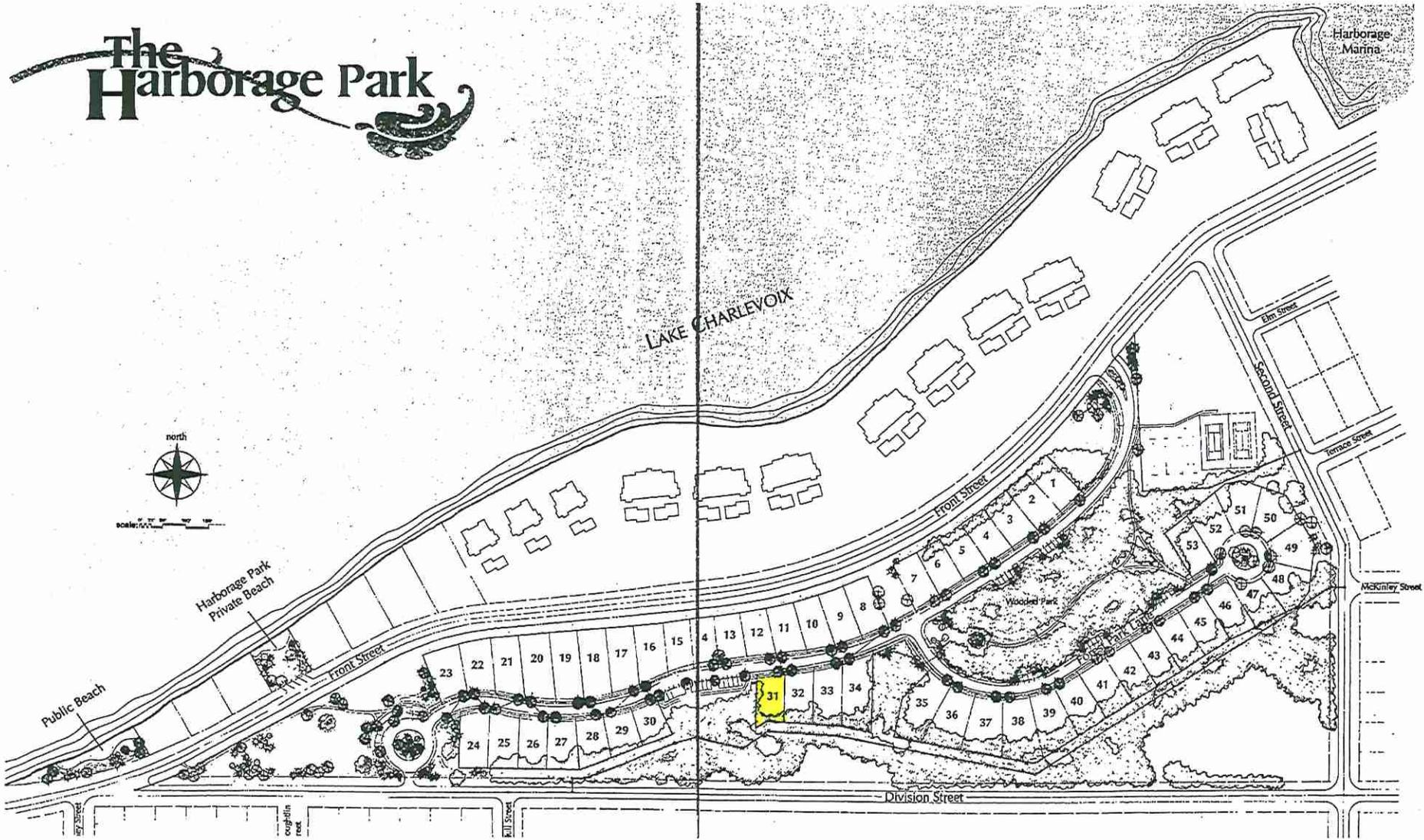
Montague Addition / Remodel

709 Lake Park Drive, Boyne City, MI 49712



Rear Perspective
(Proposed Bump-out and Eave are highlighted)

The Harborage Park



**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **Chris and Lisa Montague**
 709 Lake Park Drive
 Boyne City, MI 49712

HEARING DATE: **November 5, 2013**

PROPERTY DESCRIPTION

The property located at 709 Lake Park Drive, described as tax identification number 15-051-498-031-00, hereinafter referred to as "the property".

APPLICATION

Describe Variance Requests: The applicant is requesting a one (1) foot variance from the minimum five (5) foot side yard setback requirement to allow for the eave on an addition to the property's primary residential structure. The property is located in the Traditional Residential District (TRD).

**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 **November 5, 2013** 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 applicants, Chris and Lisa Montague.
2. The property is in the Traditional Residential District (TRD).
3. The property is currently developed with a single family dwelling in The Harborage condominium.
4. Access to the property is provided by Lake Park Drive which is a public road that bounds the front side of the parcel.
5. The east side of the property shares a lot line with another privately owned single family dwelling in the condominium.
6. The west side of the property is a park serving as one of the condominium's dedicated open spaces.
7. The rear side of the property is bounded by another common area for the condominium.
8. The property is not irregularly shaped.
9. The TRD minimum lot area requirement is 5,445 SF.
10. Square footage of the lot is approximately 8,655 SF.
11. The TRD requires a side yard setback of no less than 5 feet.
12. The TRD requires a combined side yard setback to be no less than 15 feet.
13. The side yard setbacks for the existing primary dwelling are 5 feet and 14.8 feet, for a combined total of 19.8 feet.
14. The proposed addition to the primary dwelling would be located on the west side of the property.
- 15.
- 15.
- 16.
- 17.

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 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.
A.
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
A.
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.
A.
4. The need for the variance is not self created.
A.

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.
 - A.

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:

Roll Call

Aye:

Nay:

Abstain:

Absent:

DATE: 11/05/13

Zoning Board of Appeals Chairperson

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.