

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, October 1, 2019
5:00 P.M.
Boyne City Commission Chambers, City Hall

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



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agenda packets & minutes for each board

*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
September 3, 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, September 3, 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, Roger Reynolds and Monica Ross
Absent: John McClorey (arrived at 5:38 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 2019-9-3-2
Carlile moved, Reynolds seconded, PASSED UNANIMOUSLY, a motion to approve the May 7, 2019 meeting minutes as presented.

**Hearing Citizens Present
Correspondence(s)**

None

New Business

**Variance Request
419 E. Lincoln St.
David & Marcella Hill**

Public Hearing opened at 5:01 pm

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is requesting a two inch (2") side yard setback, or four feet ten inches (4'10") of relief from the required five foot (5') setback from the side lot line. The parcel is approximately 11,434 sq. ft and is in the TRD zoning district, and immediately west of the property the alley was vacated in 2017 with 8.25 ft. given to this property along with the property just west of the vacated alley. The topography shows gradual sloping from south to north and the applicant's drain field and septic tank are in the back yard of the property.

Dawn Behling: 519 Grant St. – I'm here to get an idea of what this request is for and how it will affect my property. She was advised that homeowners within 300 feet of a variance request gets notification. She had concerns as her property backs up to the side yard of this parcel due to the vacation of the alley back in 2017. She had a survey done shortly after the vacation, and the stakes are still standing.

Public Hearing closed at 5:09 pm

Board Discussion

The board had concerns about the lack of detail given to them to make an educated decision as the applicant is not in attendance tonight to answer questions. What would the ramifications be if they were to shift the 8.25 ft from the 409 E. Lincoln St. property to 419 in order to make the lot big enough so a variance was not required? Kilkenny was not sure if that option was even possible legally, but could check into it. It was brought up that the legal description as given on the application does not indicate the additional feet given to both

properties at the vacation of the alley between them in 2017. Even with the knowledge that the plat maps and aerials can be up to 30 feet off, they wanted clarification of when the parking pad for the carport was put in and was it done without the knowledge of the city, as it appears to sit in the middle of the vacated alley, did the applicant consider "single stacking" the cars under the carport, or a possible lot reconfiguration of both of the properties that they own 409 & 419? Do they have a survey that can accurately indicate to us the placement of the house, parking pad, driveway, shed and drain field?

Kilkenny indicated that some of these questions are a moot point as they are not a part of the application before the board, the relief is the only thing that can be considered tonight. A lot reconfiguration must meet all of the zoning ordinance standards, and it is unknown if the lot at 409 could even be reduced in size as it may already be a non-conforming lot. Questions were brought up that if the neighboring property were ever sold, would the prospective buyer be able to get bank financing, if a reconfiguration was done on it. With the information the board has before them tonight, possibly table the discussion until next month and give the applicant an opportunity to be in attendance and/or provide some additional information.

Marcella Hill: applicant and owner of 419 E. Lincoln St. and 409 E. Lincoln St. arrived at 5:21 pm and heard some of the boards concerns. They do own the neighboring property, and there is only 21 feet from the side yard lot line, so if they reconfigured the lots and took 5 feet from that one, it would leave them only 16 ft. in order to put a possible covered carport on that property as well. There is no other spot on either parcel to put up a carport that is level and suitable. The entire back yard of our house (419) is taken up by our drain field and septic tank, we do have a small tool shed in the back corner of the property. I'm not sure how to get the additional information you are looking for, can we use the survey markers that are still up from my neighbor's survey? Do I take pictures of the corner markers or do we have to get a survey? The board gave her a few suggestions that would possibly help her application; get a survey of both parcels, or at least get confirmation of the front corner markers on both parcels, check with the city to see if a lot reconfiguration can be done as the 409 property may be an existing non-conforming lot; check with staff to see if the possibility of putting all of the 16.5 ft from the vacated alley on parcel 419 and nothing on 409? **Kilkenny** - continued to stress to the board that there was nothing in the application indicating the inclusion of 409 E. Lincoln St. so that was not an option for the board to consider tonight.

The board asked if by tabling the decision until next month would it give the applicant time to amend their application request, give them time to gather the additional information, obtain a survey or consider a lot reconfiguration or completely withdraw their application. Marcella Hill indicated that yes it would help and she will get with staff to discuss options

McCloyey arrived at 5:38 pm

MOTION

After board discussion, **motion by Kubesh, seconded by Ross** to table the variance application until next month in order for the applicant to provide a survey or evidence of the corner stakes of both properties, consider the possibility of a lot reconfiguration and get with staff to check to see what the legality of taking the entire 16.5 ft from the alley vacation and giving it all to the 419 E. Lincoln St. property.

2019-9-3-5A.

Roll Call

Aye: Carlile, Kubesh, McClorey, Reynolds and Ross

Nay: None

Abstain: None

Absent: None

Motion Carries

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

None

Good of the Order

Monica Ross will be unavailable for the October meeting

Announcements

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for October 1, 2019 at 5:00 p.m.

**Adjournment
MOTION**

ZBA 2019-9-3-10

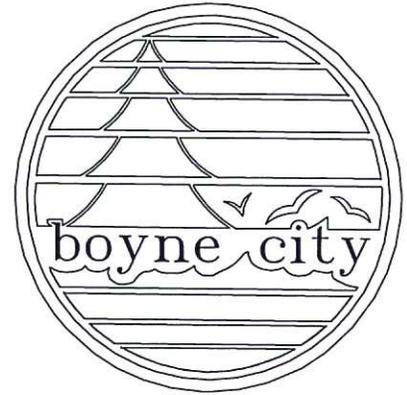
Carlile moved, Ross seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, September 3, 2019 Boyne City Zoning Board of Appeals meeting at 5:43 p.m.

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: October 1, 2019
Subject: Variance Request at 419 E. Lincoln St.
(continued from 9/3/2019)



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).

Discussion

At the September 3, 2019 meeting, the ZBA moved to table the variance application until next month in order for the applicant to provide a survey or other evidence of the property boundaries.

On September 23, 2019 Staff received the attached email from the applicant with a request to the board to postpone a decision on her application until the November 5, 2019 meeting due to a number of extenuating factors.

Summary

The applicant is requesting that the board postpone a decision on her Zoning Board of Appeals Application until the November 5, 2019 meeting.

Please find enclosed in this packet the following exhibits:

- A. September 23, 2019 email from the applicant to Staff
- B. September 3, 2019 Zoning Board of Appeals Agenda Packet

Patrick Kilkenny

From: Marcella Hill <marcella.koss@gmail.com>
Sent: Monday, September 23, 2019 2:26 PM
To: Patrick Kilkenny
Subject: Hill variance request

Hi Patrick,

Regarding the October 1 meeting of the Zoning Board of Appeals—unfortunately it looks like there is no way for me to have a survey completed (as requested by the board) by that meeting. When I initially inquired with the survey company they had a 5 week wait to have it done. Then after starting the process we unfortunately discovered that there was some miscommunication and that the process of vacating the alley in between my two properties was never actually fully completed, which has delayed the process a little more.

I should be able to have the information that the board is requesting by the November meeting, and I'd like to ask that they delay revisiting my request until then if possible.

Please let me know if there is anything else I can do at this point.

Thanks for all of your help,

Marcy Hill

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.

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

Public Comment:

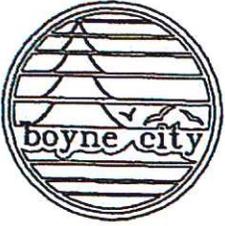
8/19/19 Letter of support from Haggard's Plumbing and Heating

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.





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 b/w Grant + High Sts.
Property Tax ID #: 051-368-335-00 Zoning District: _____

Legal Description of Property (attach separate sheet if necessary): City of Boyne City,
Nichols + Morgans Third addition to South Boyne lot 335 Blk 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 110808. 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.

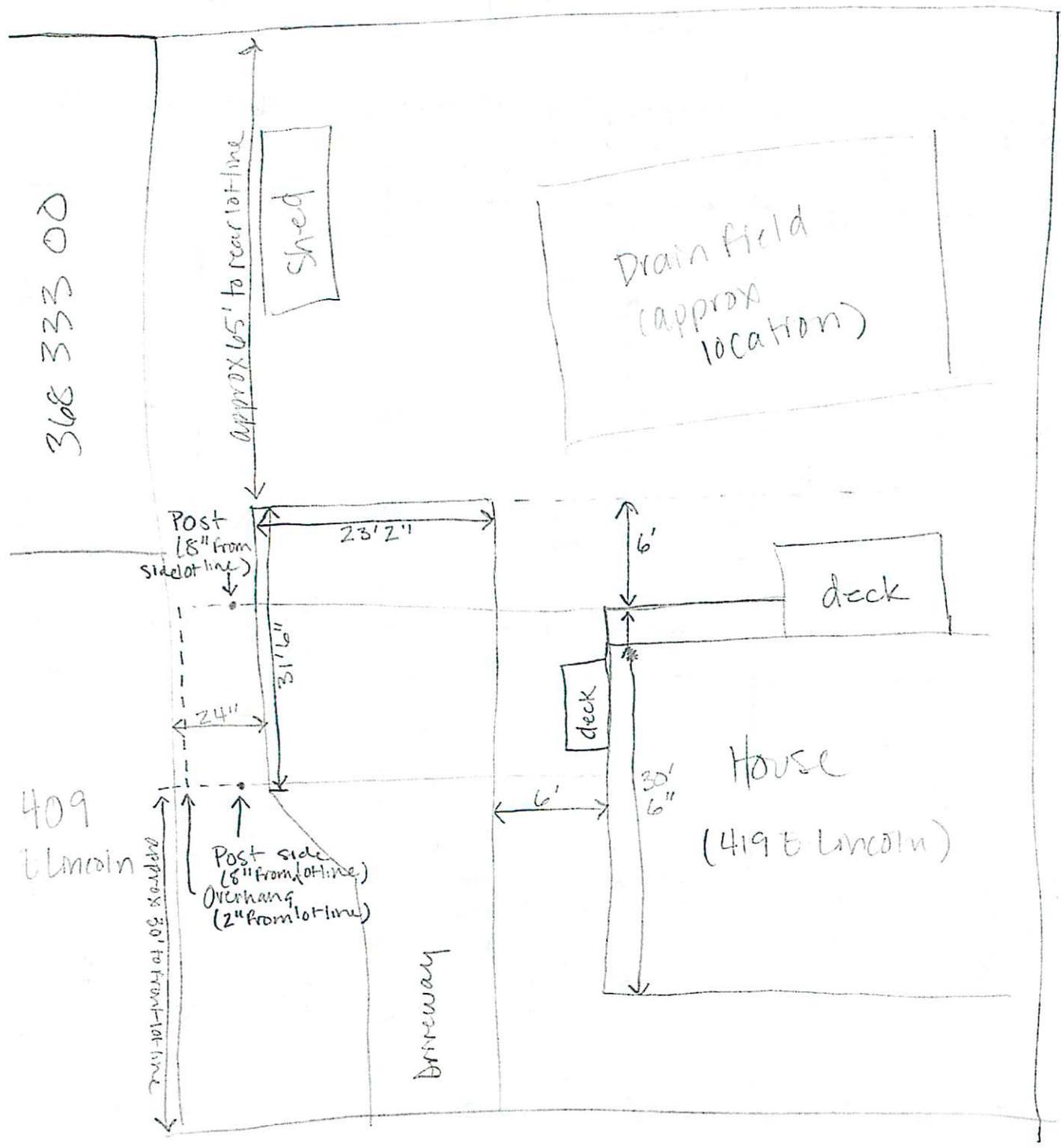
The Board shall grant no non-use variance if it finds an application does not meet all of the above listed criteria for determining whether or not a practical difficulty exists.

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.

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

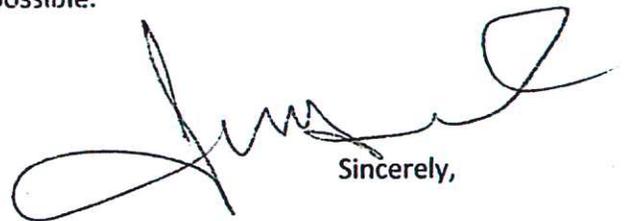
Date: August 19, 2019

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 anyways 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.