

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **515 Lewis LLC
2775 Gregory Road
Brutus, MI 49716**

HEARING DATE: **May 1, 2018**

PROPERTY DESCRIPTION

The property located at **515 Lewis Street**, described as tax identification number 15-051-378-025-15, hereinafter referred to as the property.

APPLICATION

Describe Variance Requests: Relief from the 5/12 roof pitch requirement in the Traditional Residential District (TRD).

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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 **May 1, 2018** 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 the applicant, 515 Lewis LLC.
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 placed on the property in 2013.
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 the roof pitch on the existing dwelling is less than 5/12
10. 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.

11. 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. *Looking at practical difficulties, affirmative*
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *affirmative - 1.5 ft roof pitch request is the smallest 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. *affirmative*
4. The need for the variance is not self created. *affirmative, when the structure was originally placed on another lot within the City limits, it met the ordinance requirements, which subsequently changed, making it a non conforming structure in the TRD zoning district.*
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, by moving the structure to its current location, the owners cleared a blighted lot prior to setting the house, and made the lot that it was originally sitting on conforming. when the structure was originally placed on the first lot within*

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 *the city limits,* hardship exists.

it met the ordinance requirements, which subsequently changed, making it a non-conforming structure in the TRD zoning 515 Lewis St district

Motion by: Carlike, seconded by Kubesh to recommend approval of the requested variance as presented

ZBA 2018-05-01

Roll Call:
Aye: Carlike, Kubesh and Reynolds
Nay: McClorey and Murray
Abstain: none
Absent: none

Motion carries

Date: May 1, 2018



Zoning Board of Appeals Chairperson - Pat Kubesh

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.