

**BOYNE CITY  
ZONING BOARD OF APPEALS**

**APPLICANT INFORMATION**

**APPLICANT:**            **DJP Holdings LLC – Pamela Mrstik Manning  
18273 Blue Heron Pointe Dr.  
Northville, MI 48168**

**HEARING DATE:**    **September 5, 2017**

**PROPERTY DESCRIPTION**

PT OF BLK 1 OF WM T ADDIS ADD TO SPRING HARBOR BEG AT A PT ON S SIDE OF BAY ST WHICH WOULD BE INT BY W LI OF ROBINSON ST IF EXT S TH S AL SD EXT W LI OF ROB- INSON ST TO SH OF LK CX TH WLY AL SH TO A PT SD SH 100FT MEAS PERP FROM W LI OF ROBINSON ST IF EXT TH N PARA WI EXT LI OF ROBINSON ST & 100 FT WLY TO S SI BAY ST TH AL S SI BAY ST TO POB

The subject parcel is located at 417 Bay St. Boyne City, MI 49712. The property is owned by DJP Holdings LLC and located in the Waterfront Residential District (WRD).

**APPLICATION**

**Describe Variance Requests:** The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 21.36 – Accessory Buildings and Structures, A. General Standards (3). “Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.” The variance request is for the removal and replacement of an existing nonconforming deck attached to the south side of the residence.

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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 **September 5, 2017** 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 DJP Holdings LLC.
2. The property identification number is 15-051-171-005-00.
3. The property is in the Waterfront Residential District (WRD).
4. The property currently includes a principal residence and an accessory building.
5. Access to the property is provided by Bay St. which is a public road that bounds the north side of the parcel.
6. The adjacent properties to the north, east and west are zoned WRD.
7. The property is not irregularly shaped.
8. The topography of the property is steep on the northern half of the property sloping from north to south, and gradually sloping on the southern half, with a steep drop near the lakeshore.
9. Section 21.36 – Accessory Buildings and Structures, A. General Standards (3) states: “*Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.*”
10. The property is approximately 8,660 sq. ft. in size.
11. The minimum lot area in the WRD is 5,445 sq. ft.
12. The existing accessory structure (deck) is attached to the principal structure (residence).
13. The existing deck is nonconforming due to its encroachment into the 35’ waterfront setback: 35’ upland from the high water elevation as defined (582.4’).

### **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.***

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 Reynolds, seconded by McClorey 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.***

***Roll Call:***

*Aye: Kubesh, McClorey, Reynolds*

*Nay: Carlile and Murray*

*Abstain: None*

*Absent: None*

***Motion Carries***

**Date: 9-5-17**

***Original signature on handwritten copy in file***

***9-5-17***

Patrick Kubesh, Zoning Board of Appeals Chairperson

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.