

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **Jennifer Dietz**
 520 E. Division Street
 Boyne City, MI 49712

HEARING DATE: **July 1, 2014**

PROPERTY DESCRIPTION

The property located at 520 E. Division Street, described as tax identification number 15-051-032-005-50 and 051-302-005-45, hereinafter referred to as “the property”.

APPLICATION

Describe Variance Requests: The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 21.36, that states “*no garage or portion thereof shall extend into the required front yard area*”. The purpose of this request is to build a 21 ft 6 in x 25 ft accessory building in the same location as a previously existing accessory building that was destroyed in a fire in February 2014. The property is located in the Rural Estate District (RED).

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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 **July 1, 2014** 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 applicant, Jennifer Dietz.
2. The property is in the Rural Estate District (RED).
3. The property is currently developed with a single family dwelling.
4. Access to the property is provided by Division Street which is a public road that bounds the front side of the parcel.
5. The east, west and rear sides of the property share a lot line with other privately owned single family dwellings in the Rural Estate District.
6. The property is not irregularly shaped.
7. There are steep slopes in the rear portion of the property behind the primary dwelling.
8. The RED minimum lot area requirement is 5,445 SF.
9. Square footage of the lot is 34,056 SF.
10. The RED requires that no garage or portion thereof shall extend into the required front yard area.
11. The proposed accessory building would be located in the front yard of the property.
12. The proposed accessory building would have an approximately 15 ft front yard setback from the public right-of-way.
13. The proposed accessory building to the primary dwelling would be located on the west side of the property.
14. The proposed accessory building would be setback 115 ft from the rear of the property.
15. The RED requires a 5 ft side yard setback.
16. The proposed building would have an approximately 15.16 side yard setback on the west side and approximately 115 ft side yard setback on the east side.
17. *There is an existing septic tank directly behind the garage's current location, making it economically unreasonable to move the location along with the established drain field on both sides of the existing concrete slab.*

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.
Affirmative, the topography of the parcel, and the existing location of the septic tank and drain fields behind and on either side of the current concrete slab prevent the owner from meeting the required front yard area setback.
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *Affirmative, it 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. *Affirmative*

4. The need for the variance is not self created. *Affirmative, land topography and existing location of the septic tank and the drain fields are limiting.*

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, land topography and, placement of current septic tank and drain field all limit building site availability*

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 McClorey seconded by Reynolds to grant the variance as requested, due to the geography of the property and present location of the existing septic tank and drain field, it is economically unreasonable and burdensome to relocate the structure. The height of the structure must be within the RED district regulations; under 20 feet.

2014-7-1-5A

Roll Call:

Aye: Carlile, Kubesh, McClorey, Murray and Reynolds

Nay: None

Abstain: None

Absent: None

Motion Carries

DATE: 7-1-2014

Patrick Kubesh, Zoning board of Appeals Chairperson: Signature on original copy

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.