

<b>Meeting Of November 3, 2015</b>	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, November 3, 2015 at 5:00 p.m.
<b>Call To Order</b>	Chair Kubesh called the meeting to order at 5:00 p.m.
<b>Roll Call</b>	Present: Pat Kubesh, John McClorey, Lynn Murray and Roger Reynolds Absent: Bob Carlile
<b>MOTION</b>	<b>ZBA 2015-11-03 1</b> <b>Murray moved, Reynolds seconded, PASSED UNANIMOUSLY</b> a motion to excuse the absence of Carlile.
<b>Meeting Attendance</b>	City Officials/Staff: Assistant Planning Director Patrick Kilkenny and Recording Secretary Pat Haver Public Present: Seven
<b>Approval of the Minutes MOTION</b>	<b>ZBA 2015-11-03 2</b> <b>Murray moved, Reynolds seconded, PASSED UNANIMOUSLY,</b> a motion to approve the June 2, 2015 minutes as presented.
<b>Hearing Citizens Present</b>	None
<b>Correspondence(s)</b>	None
<b>New Business</b>	Public hearing opened at 5:02 pm
<b>Variance Request 628 W. Michigan Avenue</b>	Assistant Planning Director Patrick Kilkenny reviewed his staff report that was included in the agenda packet; the current owner David Austin is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 4.40 – Development Requirements, A. Building Design, 3. <i>“Accessory buildings and attached garages shall have a front yard setback that is at least ten feet greater than the front setback of the principal building that is located on the front portion of the lot”</i> The purpose of the request is to move and reconstruct an existing garage immediately west of the residence. The variance request is for approximately 5’ of relief from the required 10’ setback from the front of the principal building. <b>David Austin: applicant</b> – One correction, we actually own 1.7 acres. We would like to re-purpose the garage instead of putting it into a landfill, and with this variance it will also allow us to construct an ADA ramp as a way to enter the residence for our parents who are aging out and we will be taking care of them. The only way currently to get into the house is by stairs. The topography of the land in the back area prohibits us from moving the structure back any further and still allow construction of a ramp. <b>Kubesh</b> – Will the ramp gain entrance into the house at the garage level or upper level? <b>Austin</b> – Upper level, as an entrance will replace the current window shown in the photo. The garage will end approximately 1 foot to the right from the proposed entrance.

**Murray** – In a previous case, we looked at ADA and denied the request, I believe that we should just look at only the variance request in this situation tonight.

**George Ellwanger: neighbor** – I live directly across the street, and previously owned this residence, I know the challenges with the stairs, I believe this is a great idea and in full support of the variance of 5 feet.

**Tom Miller: neighbor at 643 W. Michigan Ave.** – I am also in support, and have no problems with the request.

Public hearing closed at 5:12 pm

Board Deliberation and Finding of Fact.

#### GENERAL FINDINGS OF FACT

1. The property is owned by David K. Austin.
2. The property identification number is 15-051-185-005-10.
3. The property is in the Traditional Residential District (TRD).
4. The property currently includes a principal residence and accessory buildings.
5. Access to the property is provided by W. Michigan Ave. which is a public road that bounds the south side of the parcel.
6. The adjacent properties to the north, east and west are zoned TRD.
7. Properties to the south across W. Michigan Ave. are zoned Waterfront Residential District (WRD).
8. Properties adjacent to the subject property are privately owned, and include existing single family dwellings.
9. To the south the property is bounded by W. Michigan Ave.
10. The property is not irregularly shaped.
11. The topography of the property is steep and wooded in the south west, steep and open in the south east, and generally flat and wooded to the north.
12. Section 4.40(A)(3) of the City of Boyne City Zoning Ordinance states: "Accessory buildings and attached garages shall have a front yard setback that is at least ten feet greater than the front setback of the principal building that is located on the front portion of the lot."
13. The property is approximately ~~0.9~~ 1.7 acres in size (200' x 200').
14. The minimum lot area in the TRD is 5,445SF.
15. *Two adjacent neighbors are present and are in support of the request*
16. *The applicant is re-purposing an existing building instead of putting it into the landfill.*

#### 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.  
*Affirmative – Topography of the property is not practical in meeting the ordinance requirements.*
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.  
*Affirmative*
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 – Topography of property and ordinance requirement causes need; 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.  
*Affirmative – Topography is unique to 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.

**ZBA 2015-11-03 5A**

**MOTION**

**Murray moved, Reynolds seconded** to grant the variance as presented. This variance request is for approximately 5 feet of relief from the required 10 foot setback from the front of the principal building.

**Roll Call**

Ayes: Kubesh, McClorey, Murray and Reynolds

Nays: None

Absent: Carlile

Abstain: None

*Motion carries*

Public hearing opened at 5:23 pm

**Variance request 629 S. East Street**

Assistant Planning Director Patrick Kilkenny reviewed his staff report that was included in the agenda packet; the current owner David B. Sandin 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 purpose of this request is to structurally attach the garage to the residence. The variance request is for approximately 10.8’ of relief from the required 15’ setback from the rear lot line of the property. The existing detached garage was built in the current location by a former owner of the property. The applicant states that the existing layout of the garage and residence causes excessive snow to drop from both roofs into the open space between the structures resulting in a safety hazard.

**David Standin: applicant** – We already have the permit for the structure, we do not have any plans to change the layout, and it is a huge safety issue with the snow falling from two different structures.

Public hearing closed at 5:38 pm

Board Deliberation and Finding of Fact.

**GENERAL FINDINGS OF FACT**

1. The property is owned by David B. Sandin.
2. The property identification number is 15-051-366-313-00.
3. The property is in the Traditional Residential District (TRD).
4. The property currently includes a principal residence and an accessory building (garage).
5. Access to the property is provided by both S. East St. and Morgan St. which are public roads that bound the west south side of the parcel respectively.

6. The adjacent properties to the north, south, east and west are zoned TRD.
7. Properties adjacent to the subject property to the north, west, and east are privately owned, and include existing single family dwellings.
8. To the south across Morgan St. is a parcel approximately 8.3 acres, vacant, and owned by the Boyne City Housing Commission
9. The property is not irregularly shaped.
10. The topography of the property generally flat and open.
11. 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.”
12. The property is approximately 8,415 sq. ft. in size (99’ x 85’).
13. The minimum lot area in the TRD is 5,445 sq. ft.
14. The existing accessory structure (garage) is detached from the principal structure (residence).
15. The existing garage is nonconforming due to a 10.8’ rear yard setback encroachment.

**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.  
*Affirmative – the pre-existing non-conformity is 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.  
*Affirmative*
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 - public safety and welfare will be enhanced by granting the variance.*
4. The need for the variance is not self created.  
*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.  
*Affirmative – the pre-existing circumstances are unique circumstances of 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.

**ZBA 2015-11-03 5B**

**Murray moved, Reynolds seconded** to grant the variance as presented. This variance request is for approximately 10.8 feet of relief from the required 15 foot setback from the rear lot line of the property.

**Roll Call**

Ayes: Kubesh, Murray and Reynolds

Nays: McClorey

Absent: Carlile

Abstain: None

*Motion carries*

**MOTION**

**Recommendation of Zoning Board of Appeals Appointments of John McClorey and Lynn Murray**

The term of John McClorey and Lynn Murray expired on September 1, 2015. Both John and Lynn have indicated they are willing to serve another three year term. After board discussion, **motion by Kubesh, seconded by Reynolds** to recommend to the City Commission the reappointment of John McClorey and Lynn Murray to a three year term on the Zoning Board of Appeals to expire on September 1, 2018

**MOTION**

**ZBA 2015-11-03 5C**

**Roll Call**

Ayes: Kubesh, McClorey, Murray and Reynolds

Nays: None

Absent: Carlile

*Motion carries*

**Adoption of 2016 Calendar**

**ZBA 2015-11-03 5D**

**MOTION**

Included in the agenda packet is the 2016 meeting calendar, for your review and consideration. **Motion by Kubesh, seconded by Murray, PASSED UNANIMOUSLY**, to adopt the 2016 calendar as presented.

**Old Business  
Reports of Officers, Boards  
and Standing Committees  
Good of the Order**

None

**Announcements  
Next Meeting**

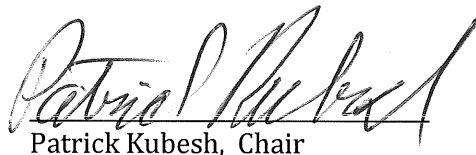
The next meeting of the Boyne City Zoning Board of Appeals is scheduled for December 1, 2015 at 5:00 p.m.

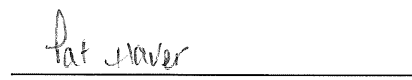
**Adjournment**

**MOTION**

**ZBA 2015-11-03 10**

**Kubesh moved, McClorey seconded, PASSED UNANIMOUSLY** a motion to adjourn the Tuesday, November 3, 2015 Boyne City Zoning Board of Appeals meeting at 5:47 p.m.

  
Patrick Kubesh, Chair

  
Pat Haver, Recording Secretary