

**Meeting Of  
November 4, 2014**

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 4, 2014 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, John McClorey, Lynn Murray and Roger Reynolds

Absent: None

**Meeting Attendance**

City Officials/Staff: Assistant Planning Director Annie Doyle and Recording Secretary Pat Haver

Public Present: Seven

**Approval of the Minutes  
MOTION**

**ZBA 2014-11-04-2**

**Carlile moved, Murray seconded, PASSED UNANIMOUSLY**, a motion to approve the October 7, 2014 minutes as presented after staff review of the audio tape for specific language brought forth by Murray during his comments on the variance request approval for Siwarga.

**Hearing Citizens Present**

None

**Correspondence(s)**

Correspondence received from Richard Cook & Mark Laethem in reference to the variance request at 710 Lake Park Dr. (received and filed)

**New Business**

Assistant Planning Director Annie Doyle reviewed the staff report that was included in the agenda packet. Darryl and Donna Parish are requesting a 6 ft. 6 in. variance from Section 20.10, requiring a 30 ft rear yard setback in the Rural Estate District. The purpose of this request is to build a 18 ft. by 30 ft. attached garage on the south/rear side of the property.

**Variance Request  
1113 Marshall Rd.  
Darryl and Donna Parish**

Public Hearing opened at 5:04 p.m.

**Floyd Wright:** Contractor for the applicant – The current house entry is at the walk out basement to the rear of the house. They would like to add a garage on this side to avoid the excessive stairs they are currently using to get to the living level on the second floor; deteriorating health and age are becoming a factor for them.

**Darryl Parish** – My wife has had (2) knee replacements and stairs are a problem for her, we would like to put up a one car garage, at the back of the house, that would take away all but 2 or 3 stairs to gain entry into the house.

**Wright** – With the minor variance, there will still be 23.5 ft, to the back. The existing driveway will remain, there will be the extension going to the proposed garage in the back. Beyond the 18 ft for the garage, we will not be leveling anything in the rear. To place the garage, we will be excavating approximately 3 feet.

**Carlile** – Will the existing garage remain in place?

**Parish** – Yes

Public Hearing closed at 5:11 pm

Board discussion

**McClore** – I am stumbling with granting the variance due to self creation, placement of the house within the envelope allowed to build.

**Carlile** – Did you build the house? **Parish** – We did not

**Doyle** – I have made available to the board a check list from the recent County Planners forum you may want to review and ask yourself the questions.

**Kubesh** – The side yard setbacks are 10 ft each side, 30 ft total, the current structure seems to be in violation.

**Doyle** – The deck is within the setback, and looks like it is non-conforming. The only variance on record was in 2002, for a 4 ¾” variance on the height.

**Murray** – There may be another option; is it possible for a seated lift on the stairs?

**Wright /Parish** – Yes with major reconstruction to the current main staircase from the basement. There is a 90 degree turn which eliminates the needed straight run with a chair lift.

Chair Kubesh facilitated the board with the review of the General Findings of Facts, for any additions or deletions. Then the board went through Section 27.45 Non-Use Variance Findings of Fact

#### **GENERAL FINDINGS OF FACT**

1. The property is owned by applicants, Darryl and Donna Parish.
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 Marshall Road which is a public road that bounds the north side of the parcel.
5. The east and south sides of the property share a lot line with other privately owned single family dwellings in the Rural Estate District.
6. To the west, the property is abutted by a private road easement known as Marshall Field.
7. The property is not irregularly shaped.
8. There are steep slopes in the rear/south portion of the property behind the primary dwelling.
9. The RED minimum lot area requirement is 5,445 SF.
10. Square footage of the property is approximately 15, 0000 SF.
11. The RED requires a 30 ft rear yard setback.
12. The proposed development would have a 23 ft 6 in rear yard setback.
13. The proposed development is 18 ft x 30 ft, on the south side of the primary structure and will be used as a garage.
14. The proposed development is intended to allow the applicants access to their vehicles on the main floor of their residence and eliminate the need for stairs.
15. The RED requires a 10 ft side yard setback.
16. The proposed development would have a 25.1 ft setback from the eastern side yard

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: 3 Due to physical limitations and health conditions, it would make it unnecessarily burdensome to comply with the regulations of the ordinance. Nay: 2*

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 required*

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: There are no public safety or welfare issues; no one could predict the medical necessity or circumstances*

4. The need for the variance is not self created.

*Affirmative: 3 The predecessor in title created the situation with the building location of the residence, however, the current owners purchased the property with zoning in effect. The current and future health conditions of the owners could not have been anticipated. Nay : 2*

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: 2 Property is located on a slope with steep topography, experiencing tremendous burdens to get in and out of their house each time utilizing the existing stairs.*

*Nay: 3*

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**

**Motion by Carlile, seconded by Reynolds** to approve the variance as requested; a 6 ft. 6 in. variance from the Boyne City Zoning Ordinance regulation, Section 20.10, requiring a 30 ft. rear yard setback in the Rural Estate District. The purpose of this request is to build an 18 ft x 30 ft attached garage on the south/rear side of the property.

**ZBA 2014-11-04 5A**

**Roll Call**

Ayes: Carlile, Reynolds

Nays: Kubesh, McClorey and Murray

Absent: None

*Motion denied*

**Donna Parish** – Spent the last 40 years as a Special Ed Administrator adhering to the American Disabilities Act, I would implore you to consider that act and the option of fairness to look at each case individually.

**Darryl Parish** - It is harming nobody; all the neighbors have supported our request. It is disappointing, but I understand your dilemma.

## **Old Business**

Roger Reynolds recused himself, as he is a close neighbor and also on the Architectural Review Board with the Harborage Park Association who reviewed

**Variance Request  
710 Lake Park Drive  
Dino Franchino**

this revised plan prior to coming to the ZBA for the variance approval. Reynolds left at 5:48 pm.

Assist Planning Director Doyle reviewed the letters that were received in reference to this request; these were the only thing new since the packets went out. The revised site plans from last month have changed slightly. The variance request remains the same with 3 ft. from the side yard setback.

**Mike Sheean** President of the Harborage Park Architectural Committee – We reviewed the requested location of the garage and have approved the placement. It is the same distance as previously requested from Front St.

**Carlile** – The request is the same, with the addition of the letters from the neighbors, what is new to us is the approval of the Harborage Architectural Review Committee.

**Doyle** – Yes

**Kubesh** – Did the width of the garage decrease?

**Franchino** – It did by 1 ft.

**Kubesh** - Last month, you were working with a 6” overhang drip line, I see 12” now.

**Franchino** – The Architectural committee requested the 12” overhang.

**Sheean** - The drip line has remained in the same location, the footing moved to the west.

Chair Kubesh opened the public hearing at 5:48 pm

**Richard Cook: neighbor** – Reviewed his November 4<sup>th</sup> submitted letter. Concerned about public safety and possible fire hazard next door to them.

Board Discussion

**Carlile** – Asked applicant to speak to some of the points brought up by Mr. and Mrs. Mark Laethem in their letter.

**Franchino** – Our original design was revised; we shaved 2 ft off the width of the house. The Park Association only has 6 or 7 plans you can choose from and we chose one to fit the narrowness of the lot. We did flip the house so our patio would be away from the neighbor’s patio to give them some privacy along with ourselves. We tried to make things fit those items that were established already. I tried to be neighborly and to make things work for everyone, however, the garage will be extremely tight.

**Kubesh** – To build in Harborage Park, there are pre-set structural designs to follow?

**Sheean** – Yes there are 7 models to select, the Franchino’s selected the one that would work best on the narrow lot.

**Murray** – Does the Association require them to build a garage? **Sheean** – No

**Murray** - Were there only those 7 models to choose from and you had to pick from those?

**Sheean** – Working with the original developer, you only had 7 to choose from. All of the homes do not have garages, some in the park have none, some have very narrow or small ones, and others have larger ones, if the lots could accommodate one.

**Doyle** – The setback to the back of the garage to Front St. is not in violation of the ordinance.

**Murray** – Home design, what is the wall extension next to the driveway?

**Franchino** – It is a fire place

**Carlile** - To come into compliance, is it as simple as to narrow the garage by 2 feet? **Franchino** – Yes

**Sheean** – The review committee felt that the two garages adjacent to each other should have the same overhand to look the same, not inferior or different. Otherwise thought it would aesthetically stand out.

**Cook** – Fire hazard concerns, who deals with them?

**Doyle** – We did contact the fire chief, and he did not see any reason for a hazard, the building department has specifications that if under 5 feet, would have to be built with fire resistant materials.

Public hearing closed at 6:07 pm

Chair Kubesh facilitated the board with the review of the General Findings of Facts, for any additions or deletions. Then the board went through Section 27.45 Non-Use Variance Findings of Fact

1. The property is owned by applicant, Dino Franchino.
2. The property identification number is 15-051-498-013-00.
3. The property is in the Traditional Residential District (TRD).
4. The property is currently developed with a single family dwelling in the Harborage Park Condominium.
5. Access to the property is provided by Lake Park Drive that bounds the front/south side of the parcel.
6. The property is bounded to the north by Front Street, a public road.
7. The adjacent properties to the west and east are also single family dwellings in the Harborage Park Condominium and in the TRD.
8. The property is not irregularly shaped.
9. There is a steep slope along the rear/northern portion of the property behind the primary structure.
10. The TRD minimum lot area requirement is 5,445 SF.
11. Square footage of the lot is approximately 6,486 SF.
12. The TRD requires that accessory buildings shall have a 5 ft side yard setback if not completely to the rear of the property.
13. The proposed accessory building is not completely to the rear of the property.
14. The proposed accessory building would have a 3 ft east side setback.
15. The proposed attachment to the ~~primary dwelling~~ *accessory building* would be located on the eastern side of the existing primary structure.

#### **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: Previous precedence in this community for side yard setback variances have been granted by this board.*
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: Spirit is being maintained, and no concerns have been expressed by the Fire Chief.*

4. The need for the variance is not self created. *Affirmative: 3, Precedence has been set in this development with setback variances previously granted. Nay: 1*
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: Precedence has been set for variances in the development*

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**

**Motion by Murray, seconded by Carlile** to approve the variance as requested; as long as fire rated materials are used for the building, a 2 ft. variance from the Boyne City Zoning Ordinance regulation, Section 20.10, requiring a 5 ft. side setback for the proposed accessory structure. The purpose of this request is to build a 12 ft x 22 ft accessory building on the east side of the property with a 3 ft. side setback. The proposed building will be used as a garage. The property is located in the Traditional Residential District (TRD).

**ZBA 2014-11-04 6A**

**Roll Call**

Ayes: Carlile, Kubesh and Murray

Nays: McClorey

Abstain: Reynolds

Absent: None

*Motion carries*

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

None

**Good of the Order Announcements**

Kubesh - I really like and appreciate the thoroughness that Annie puts into the agenda packets for our review prior to the meetings.

**Next Meeting**

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for December 2, 2014 at 5:00 p.m.

**Adjournment MOTION**

**ZBA 2014-11-4-10**

**McClorey moved, Murray seconded, PASSED UNANIMOUSLY** a motion to adjourn the Tuesday, November 4, 2014 Boyne City Zoning Board of Appeals meeting at 6:24 p.m.

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Patrick Kubesh, Chair

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Pat Haver, Recording Secretary