

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, September 11, 2018
5:00 P.M.
Boyne City Commission Chambers, City Hall

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF MINUTES – May 1, 2018
3. HEARING CITIZENS PRESENT (on non-agenda items)
4. CORRESPONDENCE
5. NEW BUSINESS
 - A. Variance Request – 409 Bay St.
 - B. Local Government Law Bulletin
6. OLD BUSINESS
 - A. None
7. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES
8. GOOD OF THE ORDER
9. ANNOUNCEMENTS
 - A. Next regularly scheduled meeting: October 2, 2018
10. ADJOURNMENT



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*click on Boards & Commissions for complete
agenda packets & minutes for each board*

*Individuals with disabilities requiring auxiliary aids or services in order to participate in municipal meetings
may contact Boyne City Hall for assistance: Cindy Grice, City Clerk/Treasurer,
319 North Lake Street, Boyne City, MI 49712; phone (231) 582-0334*

Approved: _____

**Meeting Of
May 1, 2018**

Record of the proceedings of the Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 319 N. Lake Street, on Tuesday, May 1, 2018 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 and Zoning Administrator Patrick Kilkenny and Recording Secretary Pat Haver
Public Present: Two

**Approval of the Minutes
MOTION**

ZBA 2018-5-1-2
Murray moved, Reynolds seconded, PASSED UNANIMOUSLY, a motion to approve the November 7, 2017 meeting minutes as presented.

**Hearing Citizens Present
Correspondence(s)**

None
Public Hearing opened at 5:03 pm

New Business

**Variance Request
515 Lewis Ave.
515 Lewis Ave, LLC.**

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is re-applying to seek relief from the 5/12 roof pitch requirement in the TRD. Housing availability and affordable options have been a major source of discussion with multiple city boards, commissions and groups over the past few years. Recommendations for zoning ordinance amendments from the Planning Commission to the City Commission to lesson restrictions on housing were approved and adopted earlier this year.

Mike Dell: applicant – Gave a brief review and offered additional information to the board. He feels that because the non-conformity was in place prior to the purchase and moving the residence from another city lot to the present one, in the same zoning district is rare, he thought that by doing so, would take care of non-conformities on both city lots. He has been given a quote of almost 35,000 to upgrade the roof pitch, because an engineering study is required per Charlevoix County; making the cost astronomical to bear and still keep the affordability of rent to a senior citizen low. By moving this house, it has taken care of an unsightly lot on Lewis Street by removing a dilapidated garage, cleaning up the yard, installing lawn and trees, making an unusable lot into a low income residence and also taking care of a non-conforming issue on Wilson Street where the house was moved from. The City is trying to provide affordable housing, and we are asking that you consider the burden of the additional engineering costs and what would need to occur for increased rents to cover those costs.

Public Hearing closed at 5:10 pm

Board Discussion

Bob Carlile – Neighborhood rooflines are much more in accordance or similar to yours. **Dell** – Yes, there are around 24 houses on this street with 18 or 19 that have roof pitches of 3/12 or 4/12.

Murray – Were you made aware of the roof line requirement when you were looking at this house 6 years ago, did your realtor tell you this? In reviewing our previous decision, nothing has changed.

Dell – Yes we were told, the cost for the engineered study and roof replacement is exorbitant, and we had difficulty even finding a contractor to take on the project.

Murray – I understand that we need affordable housing, the ordinance is set to protect against heavy snow load and the safety for the public. By moving a residence for any reason, must be brought into alignment with zoning. A 3/12 pitch holds about 20 lbs. of snow load, a 5/12 pitch 40 lbs. of snow load.

Mrs. Dell – The variance procedure lends to the possibility of unique circumstances with presented information for the board's consideration in granting the variances so that we can move forward to continue to offer and provide affordable housing. The house has gone through 17+ winters without any problems. It is aesthetically the same as many of the other houses on the street, and if you are not an architect, you can't tell the slight difference in the roof pitch.

With no further discussion, Kubesh facilitated the discussion on the General Findings of Fact specifically looking at Section 26.25 Nonconforming Structures and then moved onto the Findings of Fact under Section 24.80

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. *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 cleaned up a blighted lot prior to setting the house, and made the lot that it was originally setting on conforming. When the structure was originally placed on the first lot within the city limits, it*

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

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 Kubesh to recommend approval of the requested variance as presented.

2018-5-01-5A.

Roll Call

Ayes: Carlile, Kubesh and Reynolds

Nays: McClorey and Murray

Abstain: None

Absent: None

Motion Carries

McClorey and Murray Term Expirations September 2018

ZBA 2018-5-01 5B

The term of John McClorey and Lynn Murray are due to expire in September 2018. Both members have indicated they are willing to serve another three year term. After board discussion, **motion by Kubesh, seconded by Reynolds, PASSED UNANIMOUSLY**, 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, 2021.

MOTION

**Election of Officers
MOTION**

ZBA 2018-5-01-5C

Motion by Carlile, seconded by Murray, PASSED UNANIMOUSLY, to leave the slate of officers as they currently are, with Pat Kubesh as Chair and Bob Carlile as Vice Chair of the Zoning Board of Appeals

**Adoption of the 2018 Meeting Calendar
MOTION**

ZBA 2018-5-01-5D

Included in the agenda packet is the 2018 meeting calendar for your review and consideration. **Motion by Murray, seconded by Kubesh, PASSED UNANIMOUSLY**, to adopt the 2018 calendar as presented with the meetings to be held the 1st Tuesday of each month at 5:00 pm. With moving the July 3rd meeting to July 10th and the September 4th meeting to September 11, 2018 due to their proximity to the holidays

Old Business and Reports of Officers, Boards and Standing Committees

None

Good of the Order

- Lynn Murray had attended the Citizen Planner series of classes and has never received his certification. Patrick Kilkenny will look into this for him. Murray also advised the board that he was looking to put his house on the market in the near future and that it may become necessary for the board to find a new member if the house is sold.
 - Pat Kubesh will not be available for the July or August meetings if one needed to be called.
-

Announcements

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for June 5, 2018 at 5:00 p.m.

**Adjournment
MOTION**

ZBA 2018-5-01-10

Murray moved, McClorey seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, May 1, 2018 Boyne City Zoning Board of Appeals meeting at 6:22 p.m.

Pat Kubesh, Chair

Pat Haver, Recording Secretary

Draft

CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members
From: Patrick Kilkenny, Assistant Planning Director
Date: September 11, 2018
Subject: Variance Request at 409 Bay St.



Background

The subject parcel is located at 409 Bay St. Boyne City, MI 49712. The property is owned by David & Darlene Wade and located in the Waterfront Residential District (WRD).

Property Description: 15-051-171-002-10
A PARCEL OF LAND WITHIN BLK 1 WILLIAM T ADDIS ADD TO SPRING HARBOR DESC AS BEG AT NW COR OF E 66 FT OF SD BLK 1 TH S03DEG02' 34"E 50.80 FT TO INTER TRAV LI AT SH LK CHX TH AL SD LI S87DEG41' 32"W 122.79 FT TH N03DEG16' 18"W 67.19 FT TO N LI OF SD BLK 1 TH S84DEG25' 13"E 24.58 FT AL SD LI TH S84DEG48' 43"E 99.77 FT TO POB 0.23A 11/2/2017 PROPERTY LINE ADJ 051-171-002-00 & 051-171-003-00 INTO 051-171-002-10 & 051-171-003-10

The parcel is vacant, 9,869 SQ. FT. sq. ft. in size and bounded by Bay Street, a public road, to the north and Lake Charlevoix to the south. Adjacent properties to the north, east, and west are zoned WRD and are privately owned.

Discussion

The WRD requires a fifteen feet (15') setback from the rear lot line. The site plan shows a request for a three inch (3") rear yard setback, or fourteen feet nine inches (14'9") of relief from the fifteen foot (15') rear yard setback.

My review of ZBA records found three relevant cases on Bay Street related to the request. The cases are in the immediate vicinity of the subject property and included variances from the rear yard setback. At 545 Bay St a request approved in 2010 for fourteen feet six inches (14'6") of relief from a fifteen feet (15') rear yard setback. At 549 Bay St. one request, approved in 1992, allowed for a five feet (5') setback when a twenty feet (20') setback was required, (a previous request, approved in 1991 allowed for a seven feet (7') setback). Most recently, a request at 541 Bay St. was approved for thirteen feet (13') of relief from a fifteen feet (15') rear yard setback.

Other factors

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 to Lake Charlevoix.

Wade / 409 Bay St.

Page 1 of 2

A home was demolished on the property in May 2017 and the parcel was reconfigured to its current dimensions. Following demolition, the existing lakefront deck and concrete boat ramp remained in place as shown on the attached survey.

Summary

The applicant is proposing a new structure on a vacant waterfront lot, and requesting a fourteen foot nine inch (14'9") variance from the required fifteen foot (15') rear yard setback.

The ZBA should review the enclosed information, visit the property, and apply the standards in the City of Boyne City Zoning Ordinance.

Public Comment:

8/28/18 Letter of support from Haggard's Plumbing and Heating

Please find enclosed in this packet the following exhibits:

- A. Zoning Board of Appeals Application
- B. Area Map of Subject Property
- C. Findings of Fact
- D. Letter of support from Haggard's Plumbing and Heating



City of Boyne City

319 N. Lake Street
Boyne City, MI 49712-1188

231-582-0343

www.boynecity.com

No Faxed Copies/Originals only

ZONING BOARD OF APPEALS APPLICATION

Owner Name: David & Darlene Wade

Address: 721 N. Shady Hollow Circle
Bloomfield Hills, MI, 48304

Phone: 248 - 505 - 5396 E-mail: dmwade113@comcast.net
231 - 499 - 7754 - Eric eric@renderconstruction.com

Describe Variance Request: We are seeking approval to build within 3" of
the rear yard set back instead of the 15ft rear property line
set back

Property Street Address: 409 Bay Street, Boyne City, MI, 49712

Nearest Intersection: 171 W. Michigan Ave. & Bay St.

Property Tax ID #: 051-~~0022~~-002-00 Zoning District: WRO

Legal Description of Property (attach separate sheet if necessary): _____

Please attach:

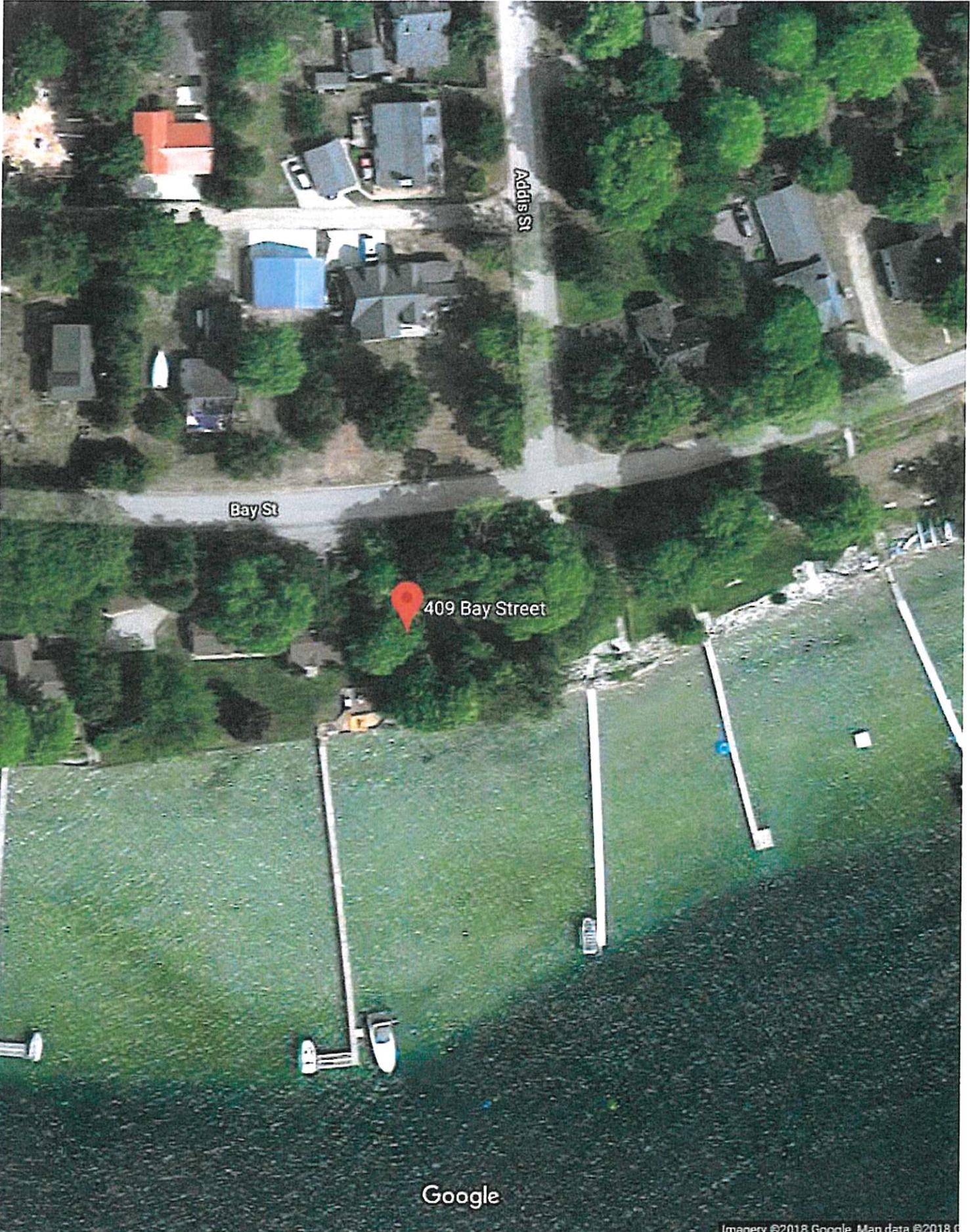
- Proposed building/construction with dimensions and front, side and rear yard setbacks
- Existing buildings/structures including decks, driveways, storage buildings, etc. *N/A*
- Lot lines and dimensions and layout, including parking/loading areas
- Photos, prints, maps, graphics, or drawings of current site
- Copy of Soil Erosion permit application or MDNR permit application, if applicable *N/A*
- Letter of approval from association's Aesthetic Review Committee, if applicable *N/A*
- Well and/or septic permit or copy of approved City sewer/water application, if applicable *N/A*
- Pertinent topographic features (steep slopes, trees, water, etc.)
- Road names, lakeshores, streams, easements, or other dedicated rights-of-way abutting the property
- Any other information you feel is necessary to present your case

Note: I understand and agree to abide by all provisions of the Boyne City Zoning Ordinance as well as all procedures and policies of the Boyne City Zoning Board of Appeals as those provisions, procedures, and policies relate to the handling and disposition of this application; that the above information is true and accurate to the best of my knowledge; and that a filing fee is due with this application. I understand that if the requested variance is granted, I am in no way relieved from all other applicable requirements. I grant permission to the Zoning Administrator and other City Officials to enter the property and make such investigations and tests as they deem necessary.

Owner's Signature [Signature] Date 8/20/18

This is to certify the required filing fee was received on 8/21/18 and documented with receipt number 100593. This application is scheduled for public hearing on 9/11/18.

Staff Initials PK



Addis St

Bay St

409 Bay Street

Google

CERTIFICATE OF SURVEY PROPOSED LOT LINE RELOCATION

PART OF SECTION 27, T33N-R6W
CITY OF BOYNE CITY
CHARLEVOIX COUNTY, MI

PARENT PARCEL

LEGAL DESCRIPTION PROVIDED - RECORDED IN L.1143 P.762

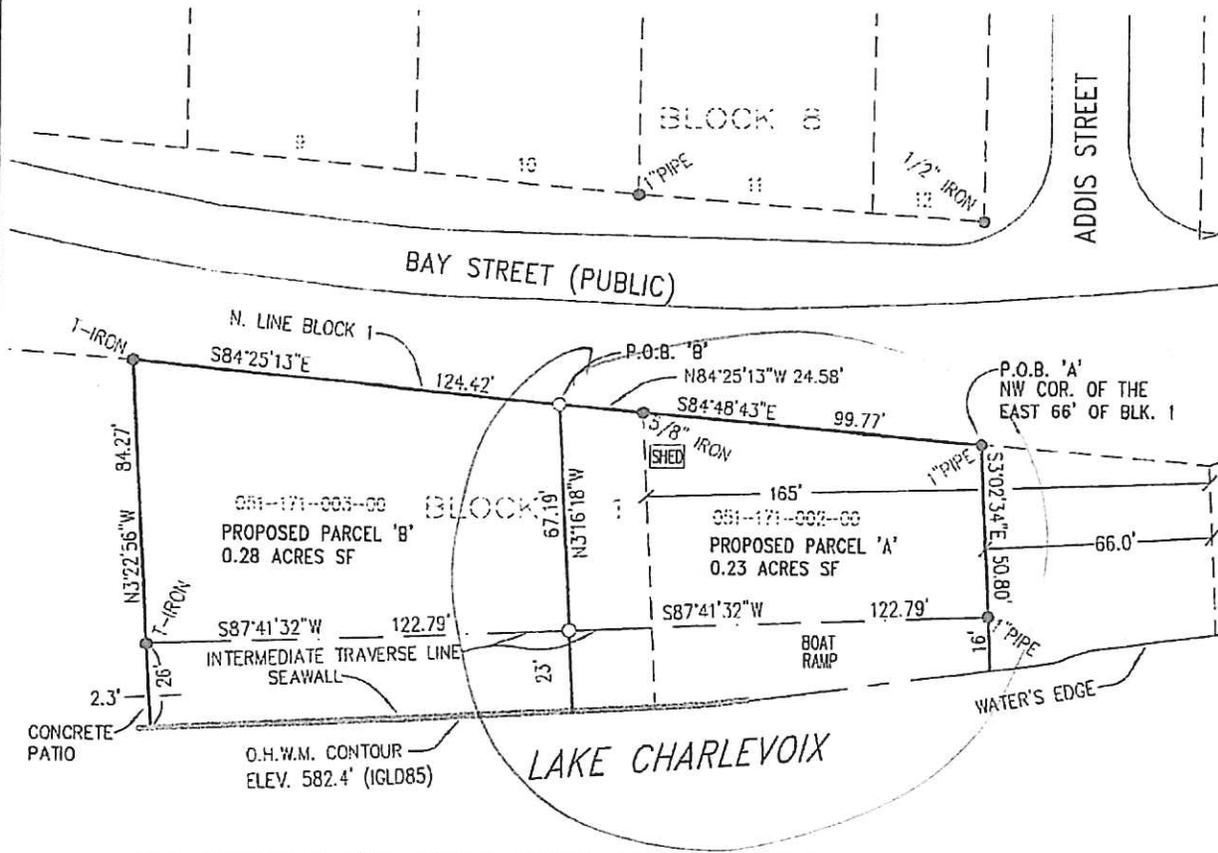
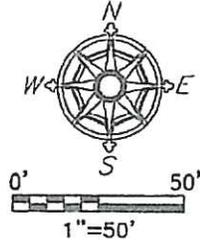
PARCEL#1 PID#15-051-171-002-00

THAT PART OF BLOCK 1 OF "WILLIAM T. ADDIS ADDITION TO SPRING HARBOR", AS RECORDED IN LIBER 1 OF PLATS, PAGE 47, CHARLEVOIX COUNTY RECORDS, LYING EAST OF THE WEST LINE OF ROBINSON STREET EXTENDED; EXCEPTING THE EAST 165 FEET THEREOF.

PARCEL#2 PID#15-051-171-003-00

THE WEST 99 FEET OF THE EAST 165 FEET OF BLOCK 1 OF "WILLIAM T. ADDIS ADDITION TO SPRING HARBOR", AS RECORDED IN LIBER 1 OF PLATS, PAGE 47, CHARLEVOIX COUNTY RECORDS

(COMMONLY KNOWN AS 413 AND 409 BAY ST., BOYNE CITY, MI.)



SEE SHEET 2 FOR LEGAL DESCRIPTION OF PROPOSED PARCELS

LEGEND

- SET 1/2" B&C #57817
- FOUND IRON (AS NOTED)
- BOUNDARY
- - - EXISTING LOT LINE
- P.O.B. POINT OF BEGINNING
- O.H.W.M. ORDINARY HIGH WATER MARK

I hereby certify that I have surveyed and mapped the land above platted and/or described on May 24, 2017 and that the ratio of closure of the unadjusted field observations of such survey was 1/5000 or greater and that the requirements of P.A. 132 of 1970 have been complied with.

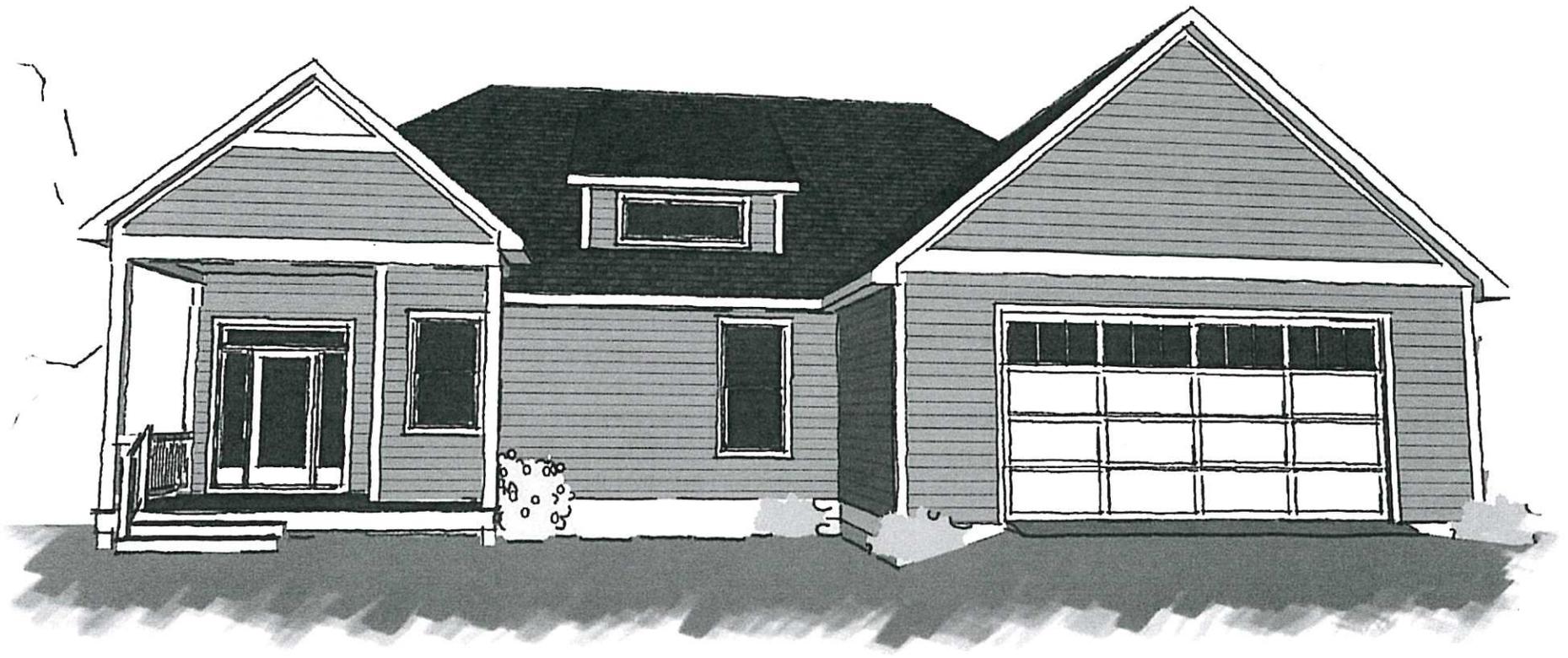
CERTIFICATE OF SURVEY
PROPOSED LOT LINE RELOCATION
PART OF SECTION 27, T33N-R6W
CITY OF BOYNE CITY
CHARLEVOIX COUNTY, MI

PROPOSED PARCEL 'A'

A PARCEL OF LAND LYING WITHIN BLOCK 1 OF "WILLIAM T. ADDIS ADDITION TO SPRING HARBOR", AS RECORDED IN LIBER 1 OF PLATS, PAGE 47, CHARLEVOIX COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS BEGINNING A 1 INCH IRON PIPE AT THE NORTHWEST CORNER OF THE EAST 66 FEET OF SAID BLOCK 1; THENCE SOUTH 03°02'34" EAST 50.80 FEET TO THE INTERMEDIATE TRAVERSE LINE OF THE SHORE OF LAKE CHARLEVOIX; THENCE ALONG SAID LINE SOUTH 87°41'32" WEST 122.79 FEET; THENCE NORTH 03°16'18" WEST 67.19 FEET TO THE NORTH LINE OF SAID BLOCK 1; THENCE SOUTH 84°25'13" EAST 24.58 FEET ALONG SAID LINE; THENCE SOUTH 84°48'43" EAST 99.77 FEET ALONG SAID LINE TO THE POINT OF BEGINNING, AND INCLUDING ALL LANDS LYING BETWEEN SAID INTERMEDIATE TRAVERSE LINE AND THE ORDINARY HIGH WATER MARK OF LAKE CHARLEVOIX, AND CONTAINING 0.23 ACRES OF LAND, MORE OR LESS.

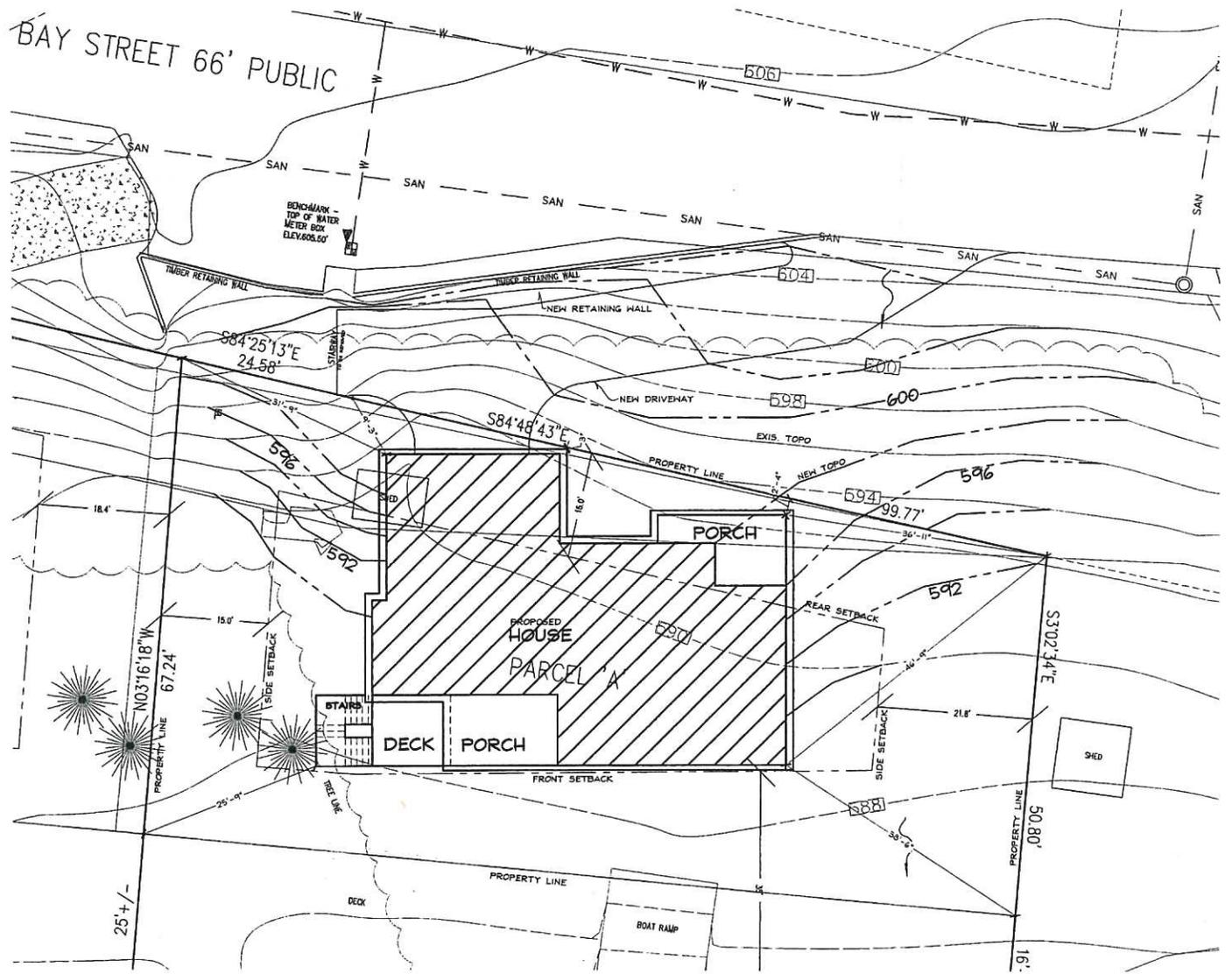
PROPOSED PARCEL 'B'

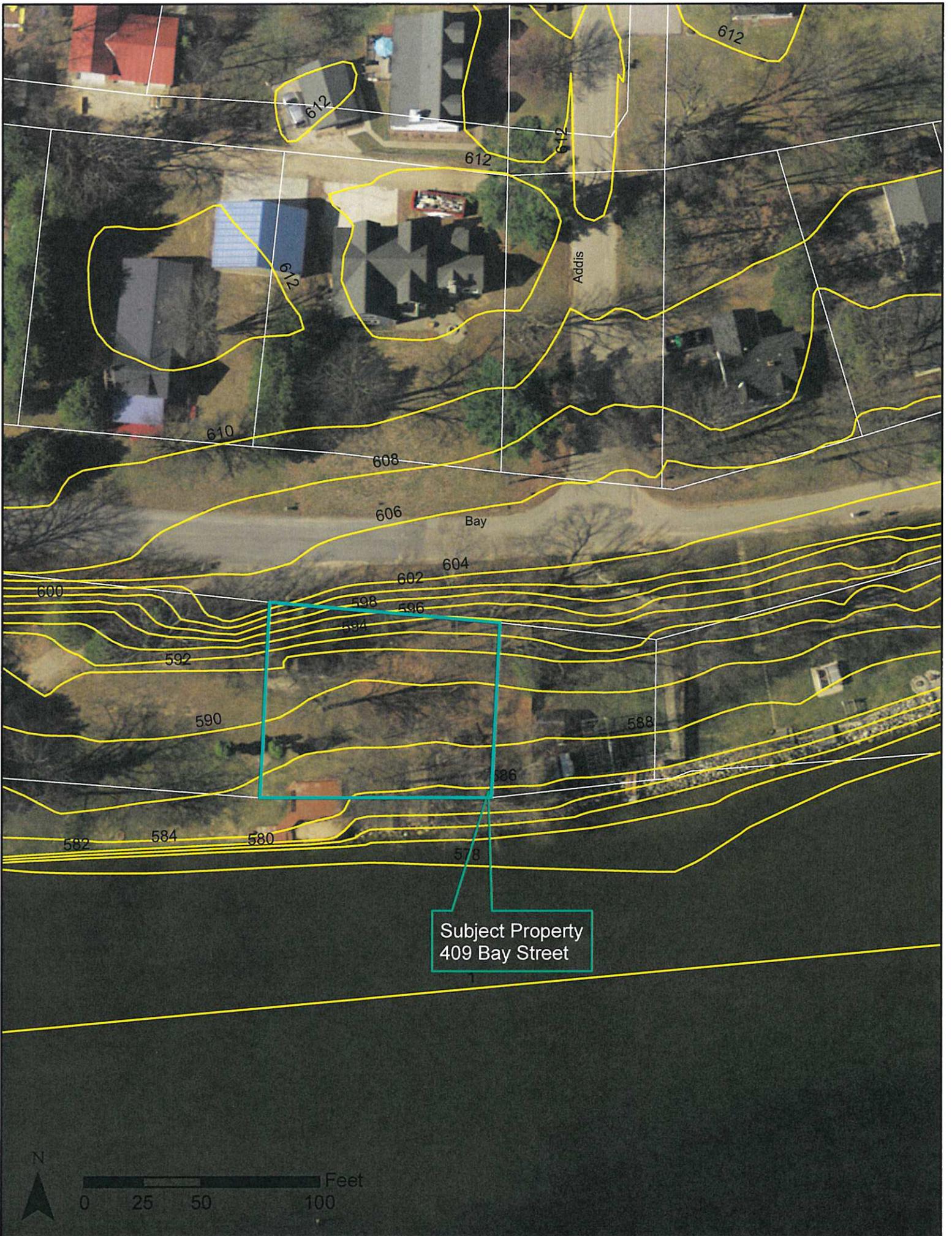
A PARCEL OF LAND LYING WITHIN BLOCK 1 OF "WILLIAM T. ADDIS ADDITION TO SPRING HARBOR", AS RECORDED IN LIBER 1 OF PLATS, PAGE 47, CHARLEVOIX COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT A 1 INCH IRON PIPE AT THE NORTHWEST CORNER OF THE EAST 66 FEET OF SAID BLOCK 1; THENCE NORTH 84°48'43" WEST 99.77 FEET ALONG THE NORTH LINE OF SAID BLOCK 1; THENCE NORTH 84°25'13" WEST 24.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 03°16'18" EAST 67.19 FEET TO THE INTERMEDIATE TRAVERSE LINE OF THE ORDINARY HIGH WATER MARK OF LAKE CHARLEVOIX; THENCE SOUTH 87°41'32" WEST 122.79 FEET ALONG SAID LINE TO A T-IRON; THENCE NORTH 03°22'56" WEST 84.27 FEET TO A T-IRON ON THE NORTH LINE OF SAID BLOCK 1; THENCE SOUTH 84°25'13" EAST 124.42 FEET ALONG SAID LINE TO THE POINT OF BEGINNING, AND INCLUDING ALL LANDS LYING BETWEEN SAID INTERMEDIATE TRAVERSE LINE AND THE ORDINARY HIGH WATER MARK OF LAKE CHARLEVOIX, AND CONTAINING 0.28 ACRES OF LAND, MORE OR LESS.



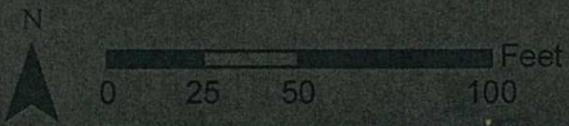


BAY STREET 66' PUBLIC





Subject Property
409 Bay Street



**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **David & Darlene Wade**
 721 N. Shady Hollow Circle
 Bloomfield Hills, MI 48304

HEARING DATE: **September 11, 2018**

PROPERTY DESCRIPTION

A PARCEL OF LAND WITHIN BLK 1 WILLIAM T ADDIS ADD TO SPRING HARBOR DESC AS
BEG AT NW COR OF E 66 FT OF SD BLK 1 TH S03DEG02'34"E 50.80 FT TO INTER
TRAV LI AT SH LK CHX TH AL SD LI S87DEG41'32"W 122.79 FT TH N03DEG16'18"W
67.19 FT TO N LI OF SD BLK 1 TH S84DEG25'13"E 24.58 FT AL SD LI TH
S84DEG48'43"E 99.77 FT TO POB 0.23A 11/2/2017 PROPERTY LINE ADJ 051-171-
002-00 & 051-171-003-00 INTO 051-171-002-10 & 051-171-003-10

The subject parcel is located at 409 Bay St. Boyne City, MI 49712. The property is owned by David & Darlene Wade and located in the Waterfront Residential District (WRD).

APPLICATION

Describe Variance Requests: The applicant is requesting a 14 foot 9 inch variance from the Boyne City Zoning Ordinance, Section 20.10, requirement of a minimum 15 foot rear yard setback.

**BOYNE CITY
ZONING BOARD OF APPEALS**

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 11, 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 David & Darlene Wade.
2. The property identification number is 15-051-171-002-10.
3. The property is in the Waterfront Residential District (WRD).
4. The property is currently includes an existing waterfront deck and concrete boat launch.
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. Lake Charlevoix bounds the parcel to the south.
8. The property is not irregularly shaped.
9. 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 toward the lakeshore.
10. The property is approximately 9,869 sq. ft. in size.
11. The minimum lot area in the WRD is 5,445 sq. ft.

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.
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

Roll Call:

Aye:

Nay:

Abstain:

Absent:

Motion

Date: 09-11-2018

Original signature on handwritten copy in file

Zoning Board of Appeals

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.

Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

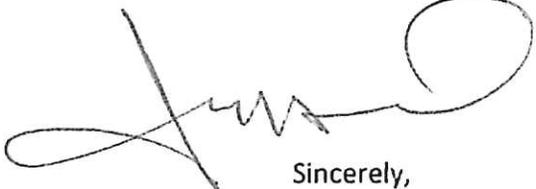
Date: August 28, 2018

To: City Planner's Office
319 N. Lake St.
Boyne City, MI 49712

RE: Variance Setback Request by David and Darlene Wade Parcel#15-051-171-002-00 located at 409 Bay St. Boyne City, MI 49712

To Whom it May Concern,

Upon reviewing the above Notice, I would like to express my view with the above case's requests. Haggard's Plumbing & Heating is not at all opposed to the changes of the property and/or the request to the Zoning Board. If a property owner is fortunate enough to have the ability and the resources in this time of economical struggles to either build and/or improve their existing property, we would like to see their request granted. It would prove positive for the local, county, state and county to do all we can to improve and promote growth in any way possible.



Sincerely,
JOHN HAGGARD



Local Government Law Bulletin | April 2018

Mika Meyers to Host Hospitality Reception at 2018 MTA Educational Conference

The Michigan Townships Association 65th Annual Educational Conference will be held at the Grand Traverse Resort from April 23 through 26, 2018. The Conference features educational programs and workshops for township officials, appointed personnel and township employees.

Our firm will host its annual hospitality reception at the Grand Traverse Resort in Suite 1456 on Wednesday, April 25 from 4:00 to 8:00 p.m. If you will be attending the Conference, we invite you to visit us at our hospitality reception for snacks and refreshments. We look forward to seeing you.

Andrea Crumback will be speaking at the Conference on Monday, April 23 from 8:30 to noon on "Lessons Learned from Menard Inc. v. City of Escanaba." Mark Nettleton and Andrea Crumback will be speaking on Wednesday, April 25 from noon to 1:00 on "Special Assessments from A to Z." Also on Wednesday, Bill Horn and Ron Redick will be speaking from 1:30 to 2:45 on "Water, Water Everywhere: Can We Regulate Its Use?" We hope you have a chance to sit in on these sessions.

Practical Advice for Variances

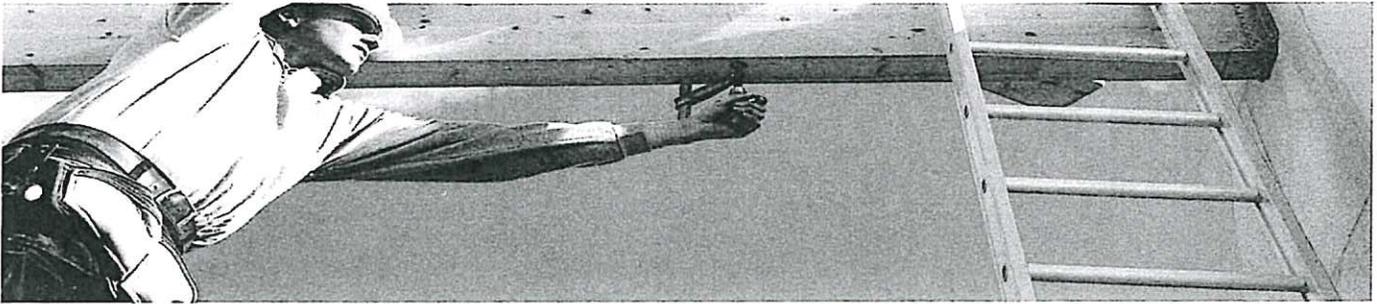
Unlike most laws or ordinances, zoning ordinances are unique in that they attempt to apply a uniform set of regulations to properties which can be very different in terms of topography, access and existing uses or buildings. The variance device is intended to avoid an unfair and unjust application of the zoning ordinance in unique situations. Based on years of experience working with Zoning Boards of Appeal (ZBA), we offer the following advice:

Know the difference between a dimensional variance and a use variance. A dimensional variance is for a use which is permitted in the zoning district, but which does not meet setback, area, height, location or similar requirements of the zoning ordinance. A use variance is a request to put the property to a use not permitted in the zoning district. Cities and villages are allowed to grant use variances; only townships which provided for use variances in their ordinances or granted use variances before

Attorneys at Law
Richard M. Wilson, Jr.
Douglas A. Donnell
Daniel R. Kubiak
Scott E. Dwyer
William A. Horn
Mark A. Van Allsburg
Neil L. Kimball
George V. Saylor, III
Elizabeth K. Bransdorfer
Randall L. Velzen
John C. Arndts
James F. Scales
Ross A. Leisman
Neil P. Jansen
Andrea D. Crumback
Daniel J. Parmeter, Jr.
Mark E. Nettleton
Nathaniel R. Wolf
Jennifer A. Puplava
Benjamin A. Zainea
Christopher D. Matthyse
Ronald M. Redick
David S. Lefere
Kimberly M. Large
Nikole L. Canute
Daniel J. Broxup
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Fredric N. Goldberg
John H. Gretzinger
Philip M. Idema
Stephen J. Mulder
Scott S. Brinkmeyer
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Paralegals
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2006 are permitted to grant use variances. Although use variances should very rarely be granted, we recommend allowing consideration of use variances if your community is eligible.

Apply the correct standard for the type of variance requested. The standard of approval for a dimensional variance is "practical difficulty," which the courts have defined to mean that strict compliance is "unnecessarily burdensome" and granting the variance would "do substantial justice to the owner." The "undue hardship" standard for a use variance is much more difficult to meet, and requires "that the property cannot reasonably be used in a manner consistent with the existing zoning." Check that your ordinance applies the correct standard for the type of variance requested.

Write the standards for a variance in a manner which is understandable to the Zoning Board of Appeals and the public. Many zoning ordinances have simply copied the boilerplate standards used in other zoning ordinances or which have always been used in the past. Take some time to take a fresh, critical look at the standards in your ordinance. Are they clear? Do they overlap each other? Should they be amended? For example, the "practical difficulty" standard could be amplified and clarified as follows:

"Does strict compliance with the ordinance either (1) totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the scope of the project, destruction or demolition of attractive features of the property, or similar reasons."

Likewise, the usual requirement that the difficulty not be "self-created" could be explained as follows:

"That the practical difficulty complained of was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements."

Remember, it is up to the applicant to justify the variance. Very often, the applicant puts little effort into justifying the request for a variance. The zoning administrator should insist that the applicant provide evidence as to why they satisfy each of the required variance standards, which could include cost estimates for strict compliance or other detailed information, before the application goes to the ZBA. If the applicant doesn't support their application, then the application could be tabled to allow the applicant to provide additional information. Or, the ZBA could make a finding that one or more of the factors for a variance is not met because "the applicant has failed to present information demonstrating that this factor has been satisfied."

A variance should not be granted just because no one objects, nor should it be denied because the neighbors object. In our experience, ZBAs sometimes approve variances simply because no one objects to the request. This does not give proper respect to the zoning ordinance, which was adopted by the elected representatives of the citizens, and sets a bad precedent for other decisions. Input from neighbors can be helpful in considering whether the variance would be detrimental to adjacent properties in the neighborhood, but in doing so, the ZBA should focus on the precise variance being requested. Often, neighbors object simply because they do not want a new building to be constructed on a previously vacant property.



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Always visit the site. Viewing the site gives ZBA members an appreciation of the “lay of the land” that cannot be gained from plans or aerial photographs. The zoning application form should include an authorization for ZBA members to enter the site. The ZBA should avoid touring the site in groups larger than a quorum.

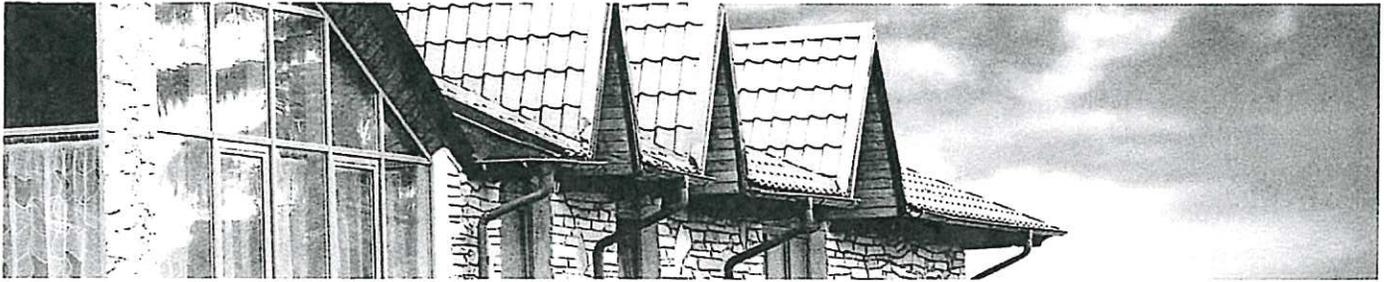
Avoid contact with neighbors or applicants outside of the meeting. Unlike the governing body or Planning Commission, which have policy making authority, the ZBA’s authority is administrative or quasi-judicial in nature. For that reason, ZBA members should avoid having contact with applicants or neighbors outside of the meeting, both before and after the decision is made. If a neighbor contacts a ZBA member by phone or e-mail, they should be encouraged to attend the meeting or to put their comments in writing so they can be shared with the entire ZBA.

Focus in particular on whether the need for the variance is a result of the unique characteristics of the property, or is a result of the applicant’s lifestyle or disagreement with the ordinance. A variance should only be available when a unique circumstance of the property results in a practical difficulty or undue hardship. Certain variance requests are simply a disagreement with the zoning ordinance. For example, a variance request concerning the maximum size of accessory buildings, the number of domestic animals allowed, or restrictions on a home occupation are disagreements with the ordinance itself, not the way it applies to a particular property. Those objections – even if they seem to have merit – should be referred to the Planning Commission and governing body.

The findings of fact must say why each factor is met, not just that each factor is met. If a variance is challenged in court, the judge reviews whether the decision represents the exercise of reasonable discretion based upon competent, material and substantial evidence in the record. A finding that: “We find that practical difficulties are present” is not sufficient. Instead, the finding should say something like: “We find that complying with the ordinance would present a practical difficulty because it would require an additional \$30,000 of grading work and removal of many mature trees from the property.” Also, specific findings should be made on all of the factors, even if a variance is denied because it does not meet one or more of the factors. This is important in case a denial is appealed.

Be very careful to specifically define what is being approved. Sometimes the ZBA may, for example, approve a variance in very vague terms such as “a variance allowing a five-foot side yard setback.” Is that for a one-story building with a 40-foot wall? Or a two-story building with an 80-foot wall on that side? These two examples could have very different impacts on the neighboring properties. The minutes should very specifically describe the character of the building which is being approved by variance or, better yet, incorporate drawings and elevations, and indicate that the variance is being granted for a specific building at that specific location.

For difficult or contentious issues, the ZBA can order that findings of fact be prepared for adoption at a future meeting. Sometimes it is apparent that a variance is going to be challenged in court, either by a disappointed applicant or by neighboring property owners. In that case, it is important to have the best “record” available for review by a court. The ZBA can make its decision, and direct that specific findings of fact be prepared by the zoning administrator and/or township attorney for review and approval at a future



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meeting. This might delay the time in which the appeal period is triggered, but it is better to have a good record than to rush to trigger the appeal period.

If someone has already violated the ordinance when they apply for a variance, treat the situation as if the building or improvement did not exist. Sometimes a property owner might carelessly or intentionally build an improvement which does not comply with setback or other dimensional requirements. When this is discovered, they may apply for a variance. The expense incurred in demolishing and relocating the improvement is a classic "self-created" hardship – the hardship results from the action of the applicant, not the property itself, and is not a justification for a variance. However, even though the cost of demolition and removal cannot be considered a hardship, that does not mean the applicant cannot still justify a variance. The ZBA's approach should be to treat the application as if the building had not been built, and neither hold the ordinance violation against the applicant nor give them sympathy for violating the ordinance.

Get training and advice for the ZBA. Unlike planning commissions, Zoning Boards of Appeal might meet only a few times a year. Training is available through Michigan State University Extension and the Michigan Townships Association. But especially if a ZBA meets very infrequently, it can be useful for the zoning administrator, planner or township attorney to prepare a report and framework for decision for the ZBA, and even attend the meeting.

Appoint a lawyer to the ZBA. Because lawyers are trained in reading ordinances and applying the law to the facts, consider recruiting a lawyer in your community to serve on the ZBA.

It is sometimes said that 90% of the variances which are granted should have been denied. We believe communities should strive to have most variance requests approved, because only those variances which have merit reach the Zoning Board of Appeals. Achieving that goal requires that the zoning administrator seek alternatives which do not require a variance, discourage applicants from seeking a variance which should not be granted, and for the ZBA to develop a track record of denying variances which do not deserve to be approved.

Mika Meyers regularly conducts training sessions on request for our clients' Zoning Boards of Appeal, which are tailored to their specific ordinance provisions. We would be pleased to do that for your ZBA.

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This newsletter is provided as an informational courtesy and should not be acted upon without professional advice.

If you have any questions or need further information regarding anything in this issue of the *Local Government Law Bulletin*, please contact one of the following members of our local government practice group.

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