

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, August 7, 2012
5:00 P.M.
Boyne City Commission Chambers, City Hall

1. CALL TO ORDER AND ROLL CALL
Excuse Absences
2. APPROVAL OF MINUTES – May 1, 2012
3. HEARING CITIZENS PRESENT (on non-agenda items)
4. CORRESPONDENCE
5. NEW BUSINESS
 - A. Member Reappointments
 - B.
6. OLD BUSINESS
 - A.
7. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES
8. GOOD OF THE ORDER
9. ANNOUNCEMENTS
10. ADJOURNMENT

Next meeting September 4, 2012

**Meeting Of
May 1, 2012**

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, May 1, 2012 at 5:00 p.m.

Call To Order

Chair Kubesh called the meeting to order at 5:00p.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 Shannon McMaster and Recording Secretary Pat Haver
Public Present: Two

Agenda correction

Under New business item 5B, the address was incorrectly posted for a variance request at 321 E. Pine St. *It should have read Variance request for a vacant lot at Bay/Mechanics Streets.* As a part of the record, there was a formal withdrawal for the request at 321 E. Pine St. on October 11, 2011.

**Approval of the Minutes
MOTION**

ZBA 2012-05-1-2
Carlile moved, McClorey seconded PASSED UNANIMOUSLY a motion to approve the October 4, 2011 minutes as presented.

Hearing Citizens Present

None

Correspondence(s)

None

New Business

**Election of Officers
MOTION**

Motion by McClorey, seconded by Murray 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.

ZBA 2012-5-1-5A

Roll Call

Ayes: Carlile, Kubesh, McClorey, Murray and Reynolds
Nays: None
Absent: None
Motion carried

**Variance request from
Richard and Patricia Viard
for vacant lot at the North
East intersection of Bay
Street and Mechanics Street**

Assistant Planning Director McMaster reviewed his staff report that was included in the agenda packet. The Viards own a vacant corner lot at Bay/Mechanics Streets that currently appears as configured on the original plat of 1884. The lot is located in the Waterfront Residential District. The front (Bay Street) side is considered the water side of the property, and the 35' setback is deeper than most of the upland lots in the other zoning districts in town due to water protections. Section 21.18 requires corner lots to observe the front setback on both streets, so in this instance 35' must be observed on both Bay and Mechanic. This lot is irregularly shaped and is wider in the rear than the front. Contact has been made by Jack Courtney and Pam Manning, who had questions but did not raise any

objections, and received a letter of support from Haggard's Plumbing. The applicants are requesting a 20 ft setback on the Mechanics Street side.

Kubesh – If this were in TRD, what would the front yard setback be?

McMaster – 10 feet.

Public hearing opened at 5:13 pm

Richard Viard, lot owner - The street is between their property and the lake. There should not be any problems with run off into the lake. A survey stake is in the street, and the streets are not where they "are supposed to be". The Viard's have owned the lot since 1979; for 30 some years, prior to current zoning.

McMaster – The current zoning ordinance has been in effect since 2001.

Kubesh – If this were in the traditional residential district, the front setback would only be 10'.

Viard – When did the non waterfront lots (upland lots), become waterfront lots? With the 2001 zoning ordinance?

Kubesh – More than likely.

Murray – What stake is in the street? **Viard** – the one in the South West corner, near the Oak tree.

Murray - With the trapezoidal shape of the lot, and needing 35' setback on both sides, it makes the buildable space more restrictive.

McCloyey – Are there any other lots that are vacant corner lots in this district?

McMaster – No, this is the only undeveloped corner lot in the district.

Public hearing closed at 5:20 pm

The board reviewed the **GENERAL FINDINGS OF FACT** that were included in the agenda packet.

1. The property is owned by the applicants, Richard and Patricia Viard.
2. The property is in the Waterfront Residential Zoning District (WRD).
3. The property has never been developed, and has never been reconfigured since the original plat of 1884.
4. The property is irregularly shaped, being narrower on the front (Bay Street) than at the rear.
5. The paved portion of Mechanics Street angles on its right-of-way so it is further from the front of the property than the rear.
6. The WRD requires front yard setback of thirty-five (35) feet.
7. Section 21.18 requires a corner lot to have a side yard setback along the side road equal to the front yard setback.
8. *If this lot was in the Traditional Residential District (TRD), the front yard setback would only be ten (10) feet.*
9. *Square footage of this lot is 9,670.32; minimum required in the TRD district is 5,445 square feet. On the survey the lot size is listed as .222 acres.*

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 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.
 - A. *Unreasonable prevention of the owner to fully use the property because it is*

bound by the Waterfront District restrictions, and the site is upland and not truly on the waterfront. Setback of 35 feet on two sides of the lot does prevent full reasonable use of the property and is unnecessarily burdensome.

- B. *The 35 foot setback from the property line will still be in place on the lake side (Bay Street)*
 - C. *Section 21.24 discusses corner visibility and nothing over 2.5 ft tall can be within a 25 foot distance from the intersection at each side, so a "triangle" area on the corner is to be kept open for visibility, which this request does not burden.*
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
- A. *Yes, the request 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.
- A. *Yes, setback as granted with the variances are still greater than in the TRD district requirements*
 - B. *The 35 foot setback from the property line will still be in place on the lake side (Bay Street)*
 - C. *Section 21.24 discusses corner visibility and nothing over 2.5 ft tall can be within a 25 foot distance from the intersection at each side, so a "triangle" area on the corner is to be kept open for visibility, which this request does not burden.*
4. The need for the variance is not self created.
- A. *The Viard's have owned the lot since 1979, prior to the current zoning ordinance requirements.*
 - B. *The configuration of the lot has not changed since it was originally platted in 1884, which pre-dates local zoning ordinance.*
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.
- A. *The variance is due to the unique circumstances of the property itself. Setbacks in the trapezoidal shape of the lot constricts them in their building within the front of the property.*

MOTION

With no further board discussion **moved by Murray, seconded by Carlile** to recommend the approval of granting the variance request for a 20 ft setback on the Mechanic Street side of the property as presented and discussed through the Findings of Facts.

ZBA 2012-5-1-5B

Roll Call

Ayes: Carlile, Kubesh, McClorey, Murray and Reynolds

Nays: None

Absent: None

Motion carried

Old Business

Carlile – Are alternates needed for the board?

McMaster – Yes, the two that were appointed a couple of years ago have been moved into permanent positions due to resignations on the board. The board would be better served if there were alternates.

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

None

Announcements

Devlon Update – The court ordered deadline to have the rubble pile removed is May 19th. They have filed an appeal with the Michigan Court of Appeals. This is “not an appeal by right” but a request put forward and the Appeals Court can choose not to accept the case. It could be a couple more months for the court to respond, and Devlon has requested a stay of Judge Patjas’ May deadline until this appeal has been decided. The building is a separate matter, and falls under the Dangerous Structure Ordinance; so the fence is likely to stay up this summer. The fence is there as a protection measure.

**Adoption of the 2012
Meeting Calendar
MOTION**

Motion by Kubesh, seconded by Murray, PASSED UNANIMOUSLY, as the July meeting falls on July 3rd, it has been recommended to move that meeting to July 10th if needed, and to adopt the rest of the 2012 meeting calendar as presented.

Next Meeting

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for June 5, 2012 at 5:00 p.m.

**Adjournment
MOTION**

ZBA 2012-5-1-10

McClore moved, Carlile seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, May 1, 2012 Boyne City Zoning Board of Appeals meeting at 5:49 p.m.

Pat Haver, Recording Secretary

Pat Kubesh, Chair

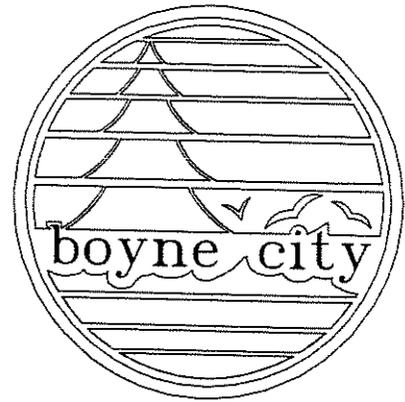
CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members

From: Shannon McMaster
Boyne City Planning and Zoning

Date: August 2, 2012

Subject: ZBA Three-year Term Expiring/McClorey
and Murray Reappointments



Background

Membership on the Zoning Board of Appeals is for a three-year term, and members may be reappointed. Members are appointed by the City Commission, and the ZBA usually makes a recommendation to the City Commission when a vacancy exists or a member's term is expiring.

John McClorey and Lynn Murray's terms expire in September of this year. Each of them has indicated that he is ready to serve another three-year term. We have no other applications for the opening.

In addition to these reappointments, the ZBA has two vacancies for alternates. An alternate serves when a regular member cannot serve on a case, and serves until the ZBA has made a final determination on the matter at hand. The City advertises for members of boards and commission in the regular City Newsletter, and in the newspaper.

The term of office for all regular ZBA members end on September 1, on a three year cycle. Two terms expire each year, except on the third year when only one term expires. The City Charter controls the general nature of terms of office, and the Zoning Enabling Act states that a term of office for a ZBA member is three years.

Recommendation

The ZBA should make a recommendation to the City Commission to reappoint John McClorey and Lynn Murray to the Zoning Board of Appeals for a three year term each, each to expire on Sept. 1, 2015.