

**BOYNE CITY
ZONING BOARD OF APPEALS**

APPLICANT INFORMATION

APPLICANT: **David K. Austin**
 628 W. Michigan Ave.
 Boyne City, MI 49712

HEARING DATE: **November 3, 2015**

PROPERTY DESCRIPTION

The subject parcel is located at 628 W. Michigan Ave., Lot 5 & W1/2 of Lot 6 Davis, (PID: 051-185-005-10). The property is owned by David K. Austin and located in the Traditional Residential District (TRD).

APPLICATION

Describe Variance Requests: The applicant is requesting a variance from the Boyne City Zoning Ordinance regulation, Section 4.40 – Development Requirements, A. Building Design, 3. “*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.*” The purpose of this 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. The property is located in the Traditional Residential District (TRD).

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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 **November 3, 2015** 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 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 is 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 the property and ordinance requirements 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.

Motion by Murray, seconded by Reynolds 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:

Aye: Kubesh, McClorey, Murray and Reynolds

Nay: None

Abstain: None

Absent: Carlile

Motion Carries

Date: 11-3-2015

Original signature on handwritten copy in files

Patrick Kubesh, Zoning Board of Appeals Chairperson

11-3-15

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.