City of Boyne City
Founded 1856

319 N. Lake Street | Boyne City, Michigan 49712 | Phone 231-582-6597
www.cityofboynecity.com | Fax 231-582-6506

BOYNE CITY
ZONING BOARD OF APPEALS MEETING
Tuesday, May 1, 2018
5:00 P.M.
Boyne City Commission Chambers, City Hall

www.cityofboynecity.com

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

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES – November 7, 2017

3. HEARING CITIZENS PRESENT (on non-agenda items)

4. CORRESPONDENCE

5. NEW BUSINESS
   - A. Variance Request – 515 Lewis Ave.
   - B. McClorey Term Expiration: September 2018
     Murray Term Expiration: September 2018
   - C. Election of Officers
   - D. Approval of 2018 Meeting Calendar

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: June 5, 2018

10. ADJOURNMENT

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 November 7, 2017

Record of the proceedings of the Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 319 N. Lake Street, on Tuesday, November 7, 2017 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 and Lynn Murray
Absent: Roger Reynolds (Arrived at 5:05 pm)

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 2017-11-07-2
McClorey moved, Murray seconded, PASSED UNANIMOUSLY, a motion to approve the October 12, 2017 special meeting minutes as presented.

Hearing Citizens Present
Correspondence(s)

None

New Business

Variance Request
854 Front St.
Gran M & Mandy S. Jurkovic

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is requesting an additional 2 foot variance to the already existing non-conforming structure. The variance request is to extend the deck an additional two feet (2') into the 35' required setback; a total of twelve feet (12') of relief requested from the required 35' waterfront setback. The property owner has filed a joint permit application with the Michigan Department of Environmental Quality/US Army Corp of Engineers for a permit to install new toe stones and re-work existing riprap. As of this time, an approval on the application has not been received from the DEQ.

Roger Reynolds arrived at 5:05 pm

Public Hearing opened at 5:06 pm

Bob Drost: Representative for the applicants – Currently the deck is 9 feet by 30 ft, and once a table and chairs is set in place, it is difficult to get around while entertaining. They do not use the deck in the morning, due to the exposure and only use the lower level deck. They would like to install a roof over the upper deck and extend it 2 feet and feel that it will be much more practical and useable. They currently are working on obtaining approval and a permit for shoreline work from the DEQ and Corps of Engineering that will allow them to build out creating a forward movement of the all-time high water mark
Harry Tuller: 923 W. Division St. – I am a neighbor, and support the request, I feel that it will not be a problem to the neighbors.
Carlile – I see this as a convenience to make the house more livable; I am having difficulty defining the hardship?
Drost - Family can't use the deck at all to entertain; if they put a roof on and extend it by the 2 ft it makes a huge difference to the family. They have a permit application for larger boulders to move the shoreline out 2 feet, I need to fix the

draft

steps leading down to the water a second time. This site is unique to the lake, and the deck is in the air, so won't have an impact on the neighboring properties.
Reynolds – According to the drawings the steps are a part of the building already and with the deck expansion, they will be eating up a part of these steps leading down to the lawn, and are not going any further into the lawn area.
Drost – How are the steps determined?
Kilkenny – You can have steps down to the water's edge.
Reynolds – If you are not moving the steps, it appears that the deck will be overhanging the steps. **Drost** – Correct, the steps are not moving, just the deck platform for more useable space.
Reynolds – Why is a permit needed, if they are not moving the steps?
Kilkenny – They are requesting to expand a non-conforming structure, adding new material the full length of the deck, is the reason we are here.
Carlile – Hung up on the word hardship; which means they can't use the property at all.
Drost – I don't see any negative impact to the neighbors.

Public Hearing closed at 5:21 pm

With no further discussion, Kubesh facilitated the discussion on the General Findings of Fact with the board adding two additional points :

14. *DEQ authorized/approved permit arrived today (received and filed in project file)*
15. *With work on the shoreline as approved, the distance from the proposed deck and water will not change.*

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 vote taken; passes 3 - 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 2 ft. request is very small*
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. *No*
4. The need for the variance is not self-created. *No*
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

Motion by McClorey, seconded by Murray to deny the application under the non-use variance as presented as not meeting items 1, 3, and 4 under the Findings of Fact under Section 24.80

2017-11-07-5A.
Roll Call
Ayes: Carlile, McClorey and Murray
Nays: Kubesh and Reynolds
Abstain: None
Absent: None
Motion Carries

Old Business and Reports of Officers, Boards and Standing Committees

None

Good of the Order

Some members of the board questioned their role in not being able to be flexible with some of the requests for variances. They felt in some situations, the applicant did not need to come before the board and should not require a variance. Should the Planning Commission look at the district requirements? Assistant Planning and Zoning Administrator Kilkenny reiterated that much of the requirements for decisions made by the ZBA is outlined in the Planning Enabling Act, which is legislative from the state and is law.

Announcements

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for December 5, 2017 at 5:00 p.m.

Adjournment MOTION

ZBA 2017-11-7-10
Murray moved, Reynolds seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, October 12, 2017 Boyne City Zoning Board of Appeals meeting at 5:45 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: May 1, 2018

Subject: Variance Request at 515 Lewis St.

Background
The subject parcel is located at 515 Lewis St. Boyne City, MI 49712. The property is located in the Traditional Residential District (TRD) and owned by 515 Lewis LLC.

On December 4, 2012 the applicant requested relief of the 5/12 roof pitch requirement from the ZBA. The request was ultimately denied by a 2-2 vote, with Chair Kubesh abstaining due to a potential conflict of interest.

In 2013 the applicant moved an existing dwelling from 935 Wilson St. onto the property at 515 Lewis St. The dwelling is a 24' x 36' modular home with a roof pitch less than 5/12, the minimum pitch required in the TRD. The applicant was issued a zoning permit for the roof replacement on November 29, 2017.

Discussion
The applicant is reapplying to the ZBA and seeking relief from the 5/12 roof pitch requirement in the TRD. As the ZBA is aware, housing availability and options have been a major source of discussion with multiple city boards, commissions and groups over the past few years. Additionally, 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.

Summary
The applicant is requesting a variance from the 5/12 roof pitch requirement in the TRD.

Public Comment:
4/17/18 Letter of support from Haggard's Plumbing and Heating

Please find enclosed in this packet the following exhibits:

A. Boyne City Zoning Ordinance (by reference)
B. ZBA Application and narrative provided by applicant
C. Pictures provided by applicant
D. Maps provided by applicant
E. 12/4/12 ZBA meeting minutes and decision & order
F. Support letter from Haggard's Plumbing

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: 515 Lewis LLC
Address: 2775 Gregory Road
Brutus, MI 49716
Phone: 231 330-0438 E-mail: flybrutus@hotmail.com

Describe Variance Request: relief from the minimum roof pitch requirement

Property Street Address: 515 Lewis Ave.
Nearest Intersection: Division St.
Property Tax ID #: 051-378-025-15 **Zoning District:** TRD
Legal Description of Property (attach separate sheet if necessary):
See attached property tax assessment

Please attach:

- ☑ Proposed building/construction with dimensions and front, side and rear yard setbacks
- ☑ Existing buildings/structures including decks, driveways, storage buildings, etc.
- ☑ 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
- ☐ Letter of approval from association's Aesthetic Review Committee, if applicable
- ☐ Well and/or septic permit or copy of approved City sewer/water application, if applicable
- ☐ 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 Michael R Dell Date 12/6/17

This is to certify the required filing fee was received on 12/6/17 and documented with receipt number 92961. This application is scheduled for public hearing on 1/9/17.
Staff Initials PK.

Section 27.45 Standards for Non-use Variances. (effective 4-28-2010)

A. The Zoning Board of Appeals may authorize, upon an appeal, a non-use variance from the strict application of any provision of this Zoning Ordinance where, by reason of exceptional irregularity, narrowness, shallowness, shape, or area of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of this Zoning Ordinance would result in peculiar or exceptional practical difficulties upon the owner of such property.

B. In hearing and deciding appeals for non-use 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.
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 Ordinance 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 non-use variance if it finds an application does not meet all of the above listed criteria for determining whether or not a practical difficulty exists.

Section 27.50 Standards for Use Variances. (effective 4-28-2010)

In consideration of variances from the allowed uses as prescribed by this Ordinance, the Zoning Board of Appeals shall, first determine that the proposed variation from use affirmatively meets all of the following general standards for unnecessary hardship:

A. The proposed variation involves exceptional circumstances not found in other areas of the same zoning district.

B. The proposed variation will be in harmony with the general purposes and intent of this Zoning Ordinance, and the Comprehensive Plan.

C. The proposed variation will not in any respect impair the public health, safety, comfort or welfare of the inhabitants of the City.

D. The proposed use will be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.

E. The proposed use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle contact in residentially zoned districts.

F. The location, size, intensity, site layout and periods of operation of such proposed use will be designed to eliminate any possible nuisance emanating therefrom, which nuisance might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.

G. The location and height of buildings or structures and the location, nature and height of walls and fences will be such that the proposed use will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

Michigan Department of Treasury
STC 1019 (Rev. 10-15)

THIS IS NOT A TAX BILL

L-4400

Notice of Assessment, Taxable Valuation, and Property Classification

This form is issued under the authority of P.A. 206 of 1893, Sec. 211.24 (c) and Sec.211.34c, as amended. This is a model assessment notice to be used by the local assessor.

FROM BOYNE CITY ASSESSOR
429 LEWIS ST
BOYNE CITY, MI 49712

PARCEL IDENTIFICATION

PARCEL CODE NUMBER: **15-051-378-025-15**

PROPERTY ADDRESS:
515 LEWIS AVE
BOYNE CITY, MI 49712

NAME AND ADDRESS OF OWNER OR PERSON NAMED ON ASSESSMENT ROLL:

*********AUTO**5-DIGIT 49705
515 LEWIS LLC
2775 GREGORY RD
BRUTUS, MI 49716-9737

PRINCIPAL RESIDENCE EXEMPTION

% Exempt As "Homeowners Principal Residence":	.00%
% Exempt As "Qualified Agricultural Property":	.00%
% Exempt As "MBT Industrial Personal":	.00%
% Exempt As "MBT Commercial Personal":	.00%
Exempt As "Qualified Forest Property":	☐ Yes ☒ No
Exempt As "Development Property":	☐ Yes ☒ No

ACCORDING TO MCL 211.34c THIS PROPERTY IS CLASSIFIED AS: 401 (RESIDENTIAL – IMPROVED)

PRIOR YEAR'S CLASSIFICATION: 401 (RESIDENTIAL – IMPROVED)

	PRIOR AMOUNT YEAR: 2016	CURRENT TENTATIVE AMOUNT YEAR: 2017	CHANGE FROM PRIOR YEAR TO CURRENT YEAR
1. TAXABLE VALUE (Current amount is tentative):	21,400	21,592	192
2. ASSESSED VALUE:	26,500	26,800	300
3. TENTATIVE EQUALIZATION FACTOR: 1.000			
4. STATE EQUALIZED VALUE (Current amount is tentative):	26,500	26,800	300
5. There WAS/WAS NOT a transfer of ownership on this property in 2016. WAS NOT			

The 2017 Inflation rate Multiplier is: 1.009

Legal Description: BEG ON N LI VACATED FRANKLIN ST & E LI OF LEWIS ST (SW COR LOT 25)CG LEWIS ADD TO BOYNE TH E AL N LI OF VAC FRANKLIN ST(S LI OF LOT 25)OF SD PLAT 202.52FT TO WLI OF ALLEY(SE COR LOT 25)IN SD PLAT TH S AL W LI SD ALLEY 66FT TO S LI OF VAC FRANKLIN ST(NE COR LOT 27)TH W AL S LI VAC FRANKLIN ST(N LI LOT 27)202.18FT TO E LI LEWIS ST TH N 66FT TO POB BEING PT VAC FRANLIN ST(AS RECD L201P576 CX R/D) LYING E OF LEWIS ST & ADJ TO LOTS 25&27 CG LEWIS ADD TO BOYNE 96SP1295 FROM 378-025-00 & 027-00

March Board of Review Appeal Information:
The Taxable Value, the Assessed Value, the State Equalized Value, the Property Classification, or the Transfer of Ownersl p may be appealed by filing a protest with the Local Board of Review. Protests are made to the Board of Review by completing a Board of Review Petition Form. A Petition Form may be obtained directly from the local unit or from the State Tax Commission at www.michigan.gov/treasury. Click on Forms (at top of page), then click on Property Tax, then click on Board of Review to obtain Form L-4035.

March Board of Review Information:

THE BOARD OF REVIEW WILL MEET AT BOYNE CITY HALL, 364 N LAKE ST, BOYNE CITY, MI 49712
MONDAY MARCH 20TH 12:00 PM - 3:00 PM AND 6:00 PM - 9:00 PM.
WEDNESDAY MARCH 22ND 9:00 AM - 12:00 PM AND 1:00 PM -4:00 PM.
PLEASE CALL 231-582-6597 FOR AN APPOINTMENT. PROTESTS BY MAIL ACCEPTED IF RECEIVED BY MARCH 22, 2017 BY 4PM.

Not less than 14 days before the meeting of the Board of Review, the assessment notice shall be mailed to the property owner.

Property taxes were calculated on the Taxable Value (see line 1 above). The Taxable Value number entered in the "Change from Prior Year to Current Year" column, does not indicate a change in your taxes. This number indicates the change in Taxable Value.

State Equalized Value is the Assessed Value multiplied by the Equalized Factor, if any. State Equalized Value must appoximate 50% of the market value.

IF THERE WAS A TRANSFER OF OWNERSHIP on your property in 2016, your 2017 Taxable Value will be the same as your 2017 State Equalized Value.

IF THERE WAS NOT A TRANSFER OF OWNERSHIP on your property in 2016, your 2017 Taxable Value is calculated by multiplying your 2016 Taxable Value by 1.009 (Inflation Rate Multiplier for the current year). Physical changes in your property may also increase or decrease your Taxable Value. Your 2017 Taxable Value cannot be higher than your 2017 State Equalized Value.

The denial of an exemption from the local school operating tax for "qualified agricultural properties" may be appealed to the local Board of Review. The denial of an exemption from the local school operating tax for a "homeowner's principal residence" may be appealed to the Michigan Tax Tribunal by the filing of a petition within 35 days of issuance of this notice. The petition must be a Michigan Tax Tribunal form or a form approved by the MichiganTax Tribunal. Michigan Tax Tribunal forms are available at www.michigan.gov/taxtrib.

Filing a protest at the Board of Review is necessary to protect your right to further appeal valuation and exemption disputes to the Michigan Tax Tribunal and classification appeals to the State Tax Commission. Properties classified Commercial Real, Industrial Real or Developmental Real may be appealed to the regular March Board of Review or to the Michigan Tax Tribunal by filing a petition by May 31. Commercial Personal, Industrial Personal, or Utility Personal Property may be appealed to the regular March Board of Review or to the Michigan Tax Tribunal by filing of a petition by May 31 if a personal property statement was filed with the local unit prior to the commencement of the Board of Review as provided by MCL 211.19, except as otherwise provided by MCL 211.9m, 211.9n and 211.9o. The petition must be a Michigan Tax Tribunal form or a form approved by the Michigan Tax Tribunal. Michigan Tax Tribunal forms are available at www.michigan.gov/taxtrib.

HOMEOWNER'S PRINCIPAL RESIDENCE AFFIDAVIT INFORMATION REQUIRED BY P.A. 114 OF 2012. If you purchased your principal residence after May 1 last year, to claim the principal residence exemption, if you have not already done so, you are required to file an affidavit by June 1 for the immediately succeeding summer tax year levy and all subsequent tax levies or by November 1 for the immediate succeeding winter tax levy and all subsequent tax levies.

Attachment to Zoning Board of Appeals Application for Variance Request

515 Lewis Ave.

Boyne City, MI

ZBA Members:

This dwelling is one of two properties that we own and have rented. 515 Lewis has been rented to a fixed income senior citizen since it was moved to this location. The other dwelling is rented through the Michigan State Housing Development Authority (MSHDA) program. MSHDA's objective is to provide financial assistance for "safe and decent affordable housing." The tenant is a single mother and has been a tenant since we purchased the property five years ago. Both of these rentals are able to be rented at very affordable rates because of their low acquisition cost.

The dollar investment we made in the 515 Lewis property is $50,750. In our effort to keep the cost reasonable we used our personal labor to clean up lot ; dismantle and remove unsightly and unsafe garage; landscape lawn area; install flooring and moldings; repair drywall; and paint walls and ceiling.

We would like to comply with the minimum roof pitch requirement. In March of this year we located a contractor, Clayton Eby Building Services, willing take on the project. However we find ourselves faced with a construction cost estimated at $30,000 and engineering cost of $5,000. The engineering cost is due to the county unwilling to issue a permit without a complete engineering analysis from roof through footings. Therefore the total estimate of cost to comply with the zoning roof pitch requirement is $35,000. This cost far exceeds our expectation and would increase our investment in the property to a total of $85,750 which will exceed the value of the property. Additionally the bid presumes that the engineering study would cost no more than the estimate and would not require any further structural requirements than those proposed by the contractor. We have made contact with an architect regarding the engineering. We were told that an economical charge would be based on 6% of the cost plans for a similar size new home ($12,000-15,000.) Based on this we believe the cost will be significantly more than the contractor estimate.

This property has been rented for the past four years for $600 per month which is a very affordable rate. At this rental amount our affordability and earnings objectives are met. However the cost a new roof at the proposed cost would result in the need for a significant increase in the monthly rent. The senior citizen tenant could no longer afford to live there.

The dwelling in its present structural configuration has been located within the city since approximately the year 2000 or 2001. It was moved only a few blocks to 515 Lewis Ave. The dwelling is similar in construction and architecture to most others in its neighborhood and fits within the neighborhood character. It has been an improvement to the lot and the neighborhood. Relocating the dwelling eliminated several zoning non-conformance issues at the original site as well as the new location. We filled a six yard dumpster twice with bags and loose household refuse from behind and within the garage. The old unsightly and unsafe garage was dismantled and removed. The relocation met all of the zoning requirements except roof pitch (the current roof pitch is 3.5/12.) It is a technicality that the relocation is considered new construction requiring the new zoning minimum roof pitch.

Please approve this request for a 1.5"/12" roof pitch variance. Doing so will allow you to help continue provide affordable and diverse housing in the community.

Schedule of investment costs
515 Lewis Ave, Boyne City

Purchase lot and home	$ 25,690.00
Survey	300.00
Excavation and foundation	6,381.00
Lot clean up	445.00
Move home to lot	4,500.00
Driveway and parking pad	1,105.00
Front and rear decks	755.00
Furnace, bathroom plmg repair	3,384.00
Flooring	2,096.00
Range, toilets, vanity, counter top	1,292.00
Permits, misc	828.00
Air conditioning unit	2,000.00
Paint, interior doors, drywall repair	1,974.00
Total	$ 50,750.00
Construction estimate	$ 35,000.00
Total investment	$ 85,750.00

Clayton S Eby Building Services, Inc.

Office: 7110 U.S. 31 N. Alanson , MI
Mail: P.O. Box 1800, Alanson, MI 49706
Tel: (231) 548-5269
Fax: (231) 548-4105
Email: ebybuilding@yahoo.com

Client: Michael Dell
Property: 515 Lewis Ave.
Boyne City, MI 49712

Home: (231) 330-0438

Operator: EBYBUILD

Estimator: Jim Bonter
Position: Estimator
Company: Eby Builders
Business: P.O. Box 1800
Alanson, MI 49706

Business: (231) 548-5269
E-mail: ebybuilding@yahoo.com

Type of Estimate: Roof estimate
Date Entered: 3/21/2017

Date Assigned:

Price List: MIGA8X_MAR17
Labor Efficiency: Restoration/Service/Remodel
Estimate: DELL

Add trusses to make 5/12 pitch, new sheathing & shingles plus additional framing & engineering:.....$30,000.00-35,000.00
The above pricing to be considered a ball park estimate and includes allowances. Pricing may vary based on final decisions and Building Department.

Terms: $2/3rds down with the balance do upon completion.

Notes: Although every effort will be taken to keep the job site clean, some construction dust may travel through out the house. Any items that are sentimental, delicate, or highly valuable are to be moved by owner(s) prior to the start. Though care will be taken during construction, we will not be liable for any damage to contents during the course of the project. Job site will be left raked outside around work areas. All finish cleaning is the responsibility of the owners. Lawns, landscaping and driveways may receive some damage from the amount of work and heavy equipment. Any of these repairs will be an extra and are not included in this estimate. Estimate only includes **one** layer of tear off, if there is more then one layer, owner will be billed at the time and material rates listed below. This estimate does not include repair for rotten wood surfaces. Any necessary repairs and all extras will be billed at $44.00 per man hour, plus all invoices plus 10% profit and 10% overhead on entire bill. All prices are subject to change based on market conditions and labor costs. Estimate does not include any code upgrades that maybe required by the Building Department.

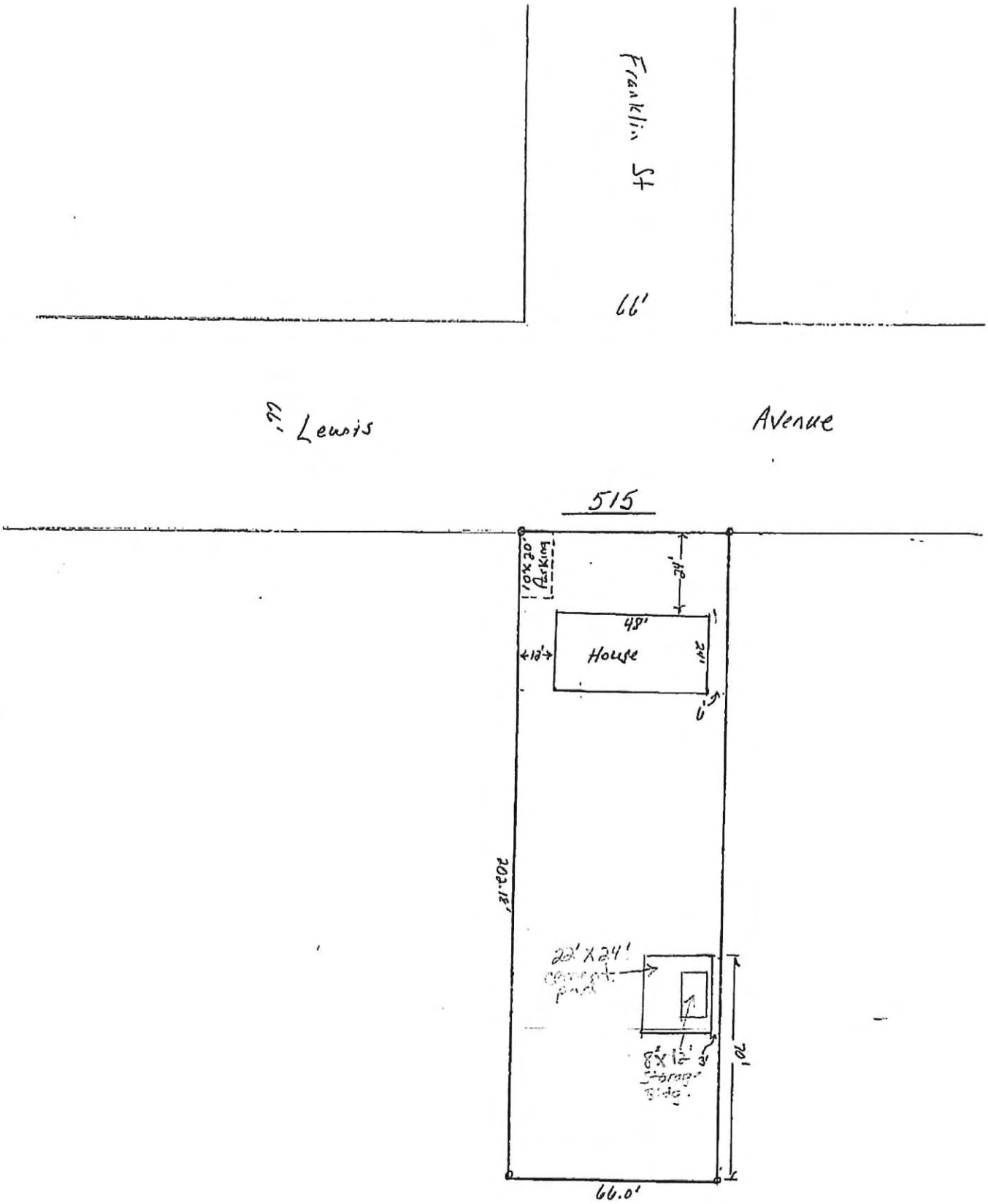
Disclosure: Other damages may appear during demolition and re installation. This estimate covers only listed items on the following pages. All additional work to be completed on a time and material basis as stated above. Rough cleaning is included in this estimate. This proposal may be withdrawn if not accepted within 10 days.

Builder's Signature _____ Date 11/21/17

Owner(s) Signature(s) _____ Date __/__/____

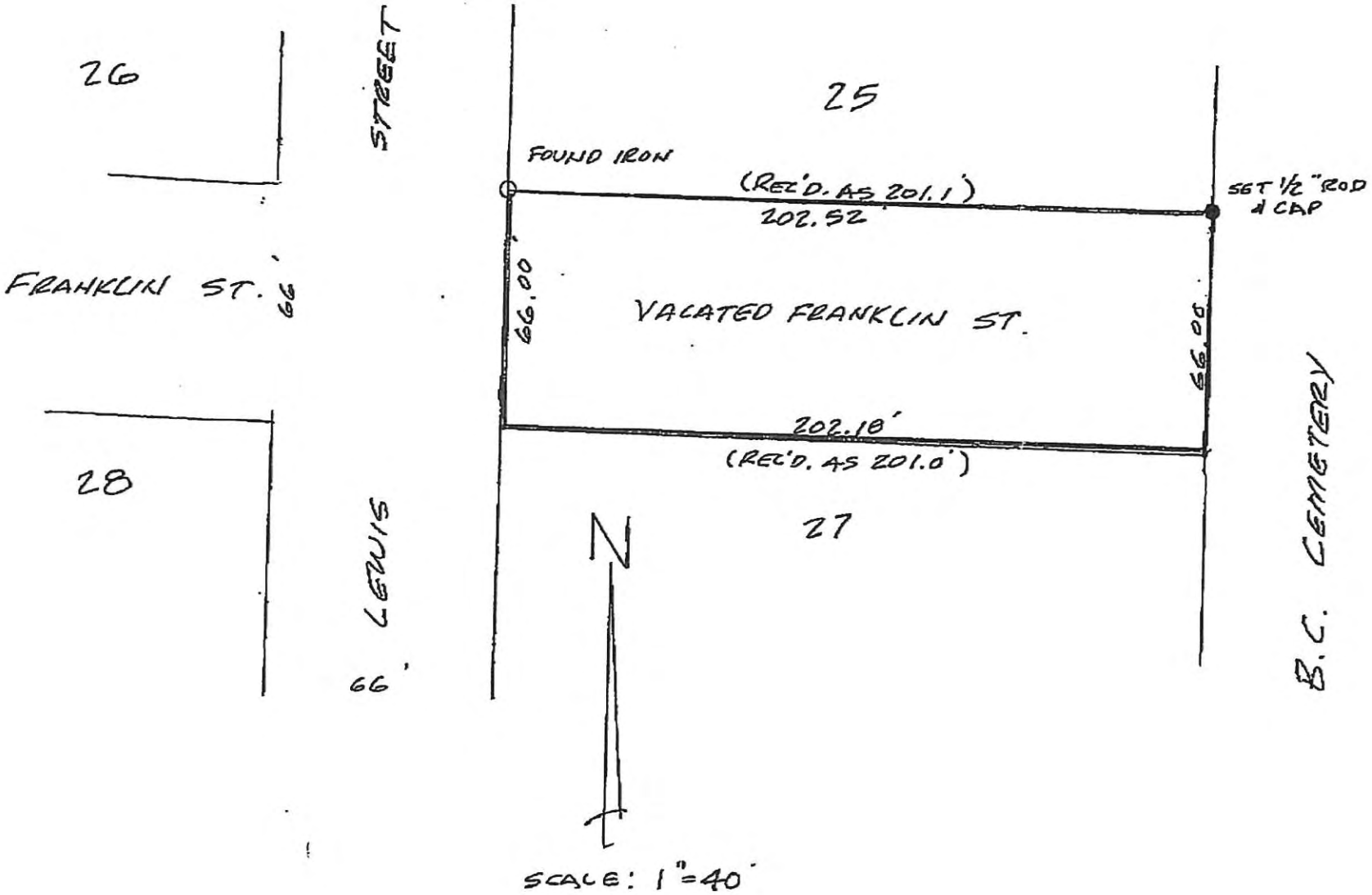
_____ Date __/__/____

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancelation form for an explanation of this right. Additionally, the seller is prohibited from having an independent courier service or other third party pick up your payment at your residence before the end of the 3-business-day period in which you can cancel the transaction.


Franklin St
66'
66' Lewis
Avenue
515
10'x20' Parking
48'
House
12'
24'
6'
202.18'
22'x24' cement pad
8'x12' Storage Bldg.
3'
70'
66.0'

B.C. Cemetary

C.G. LEWIS'S ADDITION TO BOYNE
SKETCH FOR: MIKE DELL



Google Maps

Imagery ©2017 Google, Map data ©2017 Google 100 ft

515 Lewis Ave.

Attatchment to Zoning Board of Appeals Application for Variance Request

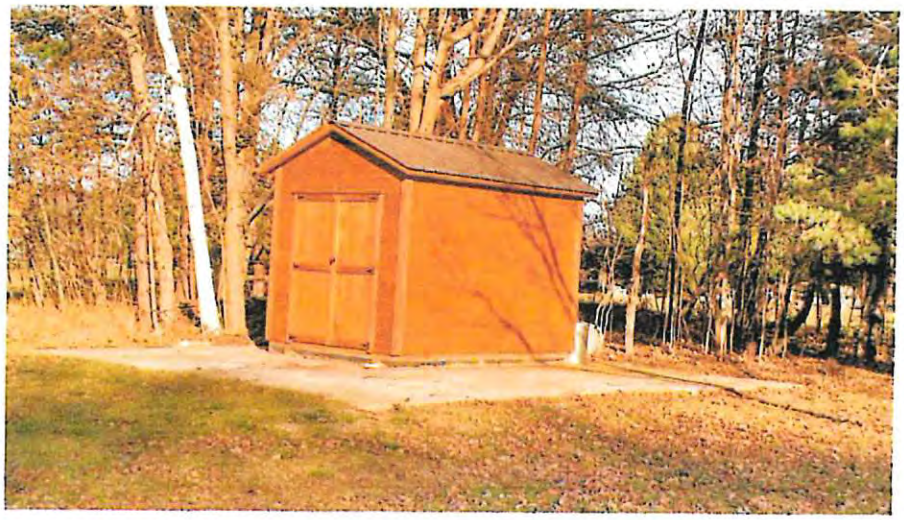
515 Lewis Ave.

Boyne City, MI

Front view

Rear view

Storage building where garage once was



Attatchment to Zoning Board of Appeals Application for Variance Request

515 Lewis Ave.

Boyne City, MI

Comparable houses on Lewis Ave.

CITY OF BOYNE CITY

To: Chair Pat Kubesh and fellow ZBA members

From: Scott McPherson, Planning Director

Date: December 4, 2012

Subject: Variance 515 Lewis Street.

Background
The applicant Alfred Stark owns a lot located at 515 Lewis Street. For many years the lot had a nonconforming dwelling and a detached accessory building on the property. The dwelling was a mobile home that was approximately 16' x 50' and was nonconforming due the fact that the dwelling width was less than 24' and the roof pitch was less than 5/12. Sometime during the summer of 2012 the mobile home as removed and the accessory building was left on the site. As the parcel now has an accessory building on the property without a primary use the use of the lot is now nonconforming.

Discussion
The applicant is requesting to move an existing dwelling that is currently located at 935 Wilson Street onto the property. The dwelling is 24' x 36' modular home that has a roof pitch of less than 5/12. To move the building onto the parcel would need approval of a variance to allow a dwelling in the TRD district to have a roof pitch less than 5/12. While a plot plan has not been provided, it is assumed that no other relief is being requested and if a variance is approved the building would be placed on the lot in accordance with all other ordinance requirements.

Summary
The applicant is requesting a variance from the 5/12 roof pitch requirement in the TRD to relocated an existing nonconforming dwelling onto a site that previously had a nonconforming dwelling which was removed.

Exhibits
A. Boyne City Zoning Ordinance (by reference)
B. Application
C. Pictures provided by applicant
D. Letter from Alfred Stark.
E. Letter from Haggard's Plumbing

Approved: May 7, 2013

Meeting Of December 4, 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, December 4, 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: Planning Director Scott McPherson and Recording Secretary Pat Haver Public Present: Five
Approval of the Minutes **MOTION**	**ZBA 2012-12-4-2** **Carlile moved, McClorey seconded, PASSED UNANIMOUSLY** a motion to approve the August 7, 2012 minutes as presented.
Hearing Citizens Present	None
Correspondence(s)	None
New Business **Roof Pitch Variance request for 515 Lewis St.**	Chair Kubesh excused himself from the posted hearing, as he has investigated the possibility of purchasing the property for an investment prior to the agenda packets arriving. Turned the meeting over to Vice Chair Carlile, and left the meeting at 5:03 pm. Planning Director McPherson reviewed his staff report that was included in the agenda packets. The lot located at 515 Lewis St for many years had a nonconforming dwelling and a detached accessory building. The nonconformity of the building was that it was less than 24' in width, and the roof pitch was less than the required 5/12. The dwelling was removed in the summer of 2012; however the accessory structure remains so now the use of the lot is nonconforming. The applicants are investigating the possibility of moving a structure from one location within the city limits to this lot. The dwelling is approximately a 24' x 36' modular home with a roof pitch less than 5/12. No plot plan was included with the application, so the assumption is that the building would be set on the lot in accordance with all of the other ordinance requirements for the Traditional Residential Zoning District (TRD). The roof pitch is the only item being requested for a variance. **Carlile** – What would be the reason for a 5/12 pitch for the roof; drainage issue, cosmetic issue? **McPherson** – This requirement was prior to my coming on board, so am not sure what the reasoning or rationale is behind it, I can only assume it is aesthetics. **Chris Christensen: Local realtor** - Some private associations or developments put in a 5/12 pitch requirement to discourage mobile homes without disallowing them. Public Hearing opened at 5:06 pm

William Church: Current owner of the house to be moved - My wife and I purchased the home that is very close to my house after the last owner fell on hard times, it will allow us to have some space and to improve both neighborhoods.
Christensen – The house has been on the market for over 430 days, the downfall seems to be the 5/12 roof pitch requirement when moved.
***Alfred* (Mike) Stark: Owner of 515 Lewis St.** - Have owned this property for 10 – 12 years. My original renter was under Section 8, my last renter passed away last year. Moved the existing trailer out this past summer.
Christensen - The front door of the residence when it is moved will be turned to face the road. Manufactured homes are approved by the government and must be built to certain codes and structures, this is the first time I've heard of a municipality which has any type of restrictions, other than square footage and lot line setbacks.
Michael Dell – My wife and I have driven on Lewis Street, there appears to be 19 or so homes that have the same roof pitch as the house we want to move, it would be a great improvement to the community than what was there. Want to put in something compatible to the existing community.
Christensen – You need to look at affordable housing issues, it is close to the schools, and it is desirable to families. With this requirement is it a form of exclusionary zoning?
Carlile – Will this become your principal residence?
Dell – No investment property
Reynolds – What is the current roof pitch of the house to be moved?
Dell – 3 ½ /12
Carlile – What are your plans for the adjacent building in the back keep, renovate or demolish?
Dell – Based on what I saw, remove it.

Public hearing closed at 5:17 pm

Board Deliberation
Director McPherson read from the draft findings of fact included in the agenda packet, and the board deliberated each point individually, with their answers to the findings of fact below:

GENERAL FINDINGS OF FACT

1. The property is owned by the applicant, Alfred Stark.
2. The property is in the Traditional Residential Zoning District (TRD).
3. The property is located a 515 Lewis Street
4. The property dimensions are 66' x 201' and it has an area 13,266 square feet.
5. The minimum lot width for a lot in the TRD is 50' and the minimum area is 5,445
6. The property had a nonconforming dwelling and a detached accessory building on the property.
7. The nonconforming dwelling was removed in the summer of 2012.
8. Nonconforming structures are regulated by BCZO Section 26.25 which is as follows:

Section 26.25 Nonconforming Structures.

Where a lawful structure exists on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance, which

structure could not be built under this Zoning Ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following:

A. *No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Should such structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased.*

B. *If such structure is moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.*

C. *If any such nonconforming structure ceases being used for any reason for a period of more than one (1) year, any subsequent use of such structure shall conform to the regulations specified in this Zoning Ordinance for the district in which such structure is located.*

D. *Should such structure be destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this article.*

E. A *residential nonconforming structure may be allowed to expand provided the expansion does not increase the size of the established footprint, or the expansion is within a yard which retains compliance with the required setback and height (e.g. a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming). Provided further that the following criteria are met for the subject structure:*

   1. *The cost of such work shall not exceed fifty percent (50%) of the market value of such residential structure prior to the time such work is started.*
   2. *The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage.*
   3. *Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.*

9. The property is currently nonconforming due to the fact that there is an accessory structure on the property without a primary structure.
10. The applicant desires to relocate a single family dwelling currently located at 935 Wilson Street to the property.
11. The exiting dwelling located at 935 Wilson is 24' x 36' and has a ground floor area of 864 square feet.
12. The minimum width for a dwelling in the TRD is 24' and minimum floor area is 672 square feet
13. The roof pitch on the existing dwelling is less than 5/12.
14. The minimum roof pitch for a dwelling in the TRD is 5/12 as per BCZO Section 4.40(A)(6) which is as follows:
    The minimum pitch of the roof of any building shall be five to twelve (5:12) and the maximum pitch of the roof of any building shall be twelve to twelve (12:12), except that additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed twenty-four to twelve (24:12) and the roof pitch of a covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second story deck.
15. Several existing dwellings located near 515 Lewis Street have roofs with less 5/12 pitch.

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. *Two board members felt that it was unreasonably burdensome to require the 5/12 pitch on a house that will be moved to this lot from another location within the city. Two board members felt that it was not unreasonably burdensome as that is an established requirement of the district and would create an additional nonconformity, if granted.*

2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *The board agrees this 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. *Two board members felt by granting the requested variance, the spirit of the ordinance would be observed, while the other two board members felt the variance does not meet the letter or spirit of the ordinance.*

4. The need for the variance is not self created. *Two board members felt that the need for the variance is self created, and two board members felt that the variance was 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. *Board members felt that there were not any unique circumstances of the property. As stated earlier, it is a legal conforming city lot with a width measuring 66', with a minimum width requirement in the TRD district of 50'.*

MOTION

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 McClorey, seconded by Reynolds to grant the roof pitch variance.

ZBA 2012-12-4-5A
Roll Call:
Ayes: Carlile and Reynolds
Nays: McClorey and Murray
Abstain: Kubesh
Absent: None
Motion fails

The meeting was turned back over to Chair Kubesh, who returned at 6:03 pm

---

Adoption of the 2013 meeting calendar

ZBA 2012-12-4-5B

Motion by McClorey, seconded by Murray, PASSED UNANIMOUSLY, to adopt the 2013 meeting calendar as presented with moving the January meeting from the 1st to the 8th.

Old Business
Reports of Officers, Boards and Standing Committees

None

Good of the Order
Announcements

Leslie Myers has been hired as the Assistant Planning Director, starting on the 19th of December, and will be support staff to the ZBA.

Next Meeting

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for January 8, 2013 at 5:00 p.m.

Adjournment
MOTION

ZBA 2012-12-4-10
Carlile moved, McClorey seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, December 7, 2012 Boyne City Zoning Board of Appeals meeting at 6:08 p.m.

Pat Haver

Pat Haver, Recording Secretary

Patrick Kubesh

Pat Kubesh, Chair

Robert Carlile Vice Chair

Robert Carlile, Vice Chair

BOYNE CITY
ZONING BOARD OF APPEALS

APPLICANT INFORMATION

APPLICANT: **Alfred Stark**
PO Box 475
East Jordan MI 49727

HEARING DATE: **December 4, 2012**

PROPERTY DESCRIPTION

The property located at **515 Lewis Street**, described as tax identification number 15-051-378-025-15, hereinafter referred to as the property.

APPLICATION

Describe Variance Requests: To move a single family dwelling which has a roof pitch less than 5/12 onto a lot in the Traditional Residential District (TRD).

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 **December 4, 2012** 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 the applicant, Alfred Stark.
2. The property is in the Traditional Residential Zoning District (TRD).
3. The property is located a 515 Lewis Street
4. The property dimensions are 66' x 201' and it has an area 13,266 square feet.
5. The minimum lot width for a lot in the TRD is 50' and the minimum area is 5,445
6. The property had a nonconforming dwelling and a detached accessory building on the property.
7. The nonconforming dwelling was removed in the summer of 2012.
8. Nonconforming structures are regulated by BCZO Section 26.25 which is as follows:

Section 26.25 Nonconforming Structures.

Where a lawful structure exists on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance, which structure could not be built under this Zoning Ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following:

A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Should such structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased.

B. If such structure is moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

C. If any such nonconforming structure ceases being used for any reason for a period of more than one (1) year, any subsequent use of such structure shall conform to the regulations specified in this Zoning Ordinance for the district in which such structure is located.

D. Should such structure be destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this article.

E. A residential nonconforming structure may be allowed to expand provided the expansion does not increase the size of the established footprint, or the expansion is within a yard which retains compliance with the required setback and height (e.g. a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming). Provided further that the following criteria are met for the subject structure:

1. The cost of such work shall not exceed fifty percent (50%) of the market value of such residential structure prior to the time such work is started.
2. The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage.
3. Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.

9. The property is currently nonconforming due to the fact that there is an accessory structure on the property without a primary structure.
10. The applicant desires to relocate a single family dwelling currently located at 935 Wilson Street to the property.
11. The exiting dwelling located at 935 Wilson is 24' x 36' and has a ground floor area of 864 square feet.
12. The minimum width for a dwelling in the TRD is 24' and minimum floor area is 672 square feet
13. The roof pitch on the existing dwelling is less than 5/12.
14. The minimum roof pitch for a dwelling in the TRD is 5/12 as per BCZO Section 4.40(A)(6) which is as follows:

    The minimum pitch of the roof of any building shall be five to twelve (5:12) and the maximum pitch of the roof of any building shall be twelve to twelve (12:12), except that additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed twenty-four to twelve (24:12) and the roof pitch of a covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second story deck.

15. Several existing dwellings located near 515 Lewis Street have roofs with less 5/12 pitch.

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. *Two board members felt that it was unreasonably burdensome to require the 5/12 pitch on a house that will be moved to this lot from another location within the city. Two board members felt that it was not unreasonably burdensome as that is an established requirement of the district and would create an additional nonconformity if granted.*

2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners. *The board agrees this 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. *Two board members felt by granting the requested variance, the spirit of the ordinance would be observed, while the other two board members felt the variance does not meet the letter or spirit of the ordinance.*

4. The need for the variance is not self created. *Two board members felt that the need for the variance is self created, and two board members felt that the variance was 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. *Board members felt that there were not any unique circumstances of the property. As stated earlier, it is a legal conforming city lot with a width measuring 66', with a minimum width requirement in the TRD district of 50'.*

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 McClorey, seconded by Reynolds to grant the roof pitch variance.

ZBA 2012-12-4-5A

Roll Call:
Aye: Carlile and Reynolds
Nay: McClorey and Murray
Abstain: Kubesh
Absent: None
Motion Failed

Date: December 4, 2012

Zoning Board of Appeals Vice Chairperson – Robert Carlile

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: April 17, 2018

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

RE: Consider Variance request for a Single Family Dwelling in the TRD District with a roof pitch less the 5/12. Parcel#15-051-378-025-15 Owner Described: 515 Lewis Ave (Per Parcel Search)

To Whom it May Concern,

Upon reviewing the above Notice of Public Hearing of the Zoning Board of Appeals, 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. If 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

P.O. Box 35 06238 U.S. 31 South Charlevoix, Michigan 49720 Ph (231) 547-4046 Fax (231) 547-0364

BOYNE CITY
ZONING BOARD OF APPEALS

APPLICANT INFORMATION

APPLICANT: **515 Lewis LLC**
2775 Gregory Road
Brutus, MI 49716

HEARING DATE: **May 1, 2018**

PROPERTY DESCRIPTION

The property located at **515 Lewis Street**, described as tax identification number 15-051-378-025-15, hereinafter referred to as the property.

APPLICATION

Describe Variance Requests: Relief from the 5/12 roof pitch requirement in the Traditional Residential District (TRD).

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 **May 1, 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 the applicant, 515 Lewis LLC.
2. The property is in the Traditional Residential Zoning District (TRD).
3. The property is located a 515 Lewis Street
4. The property dimensions are 66' x 201' and it has an area 13,266 square feet.
5. The minimum lot width for a lot in the TRD is 50' and the minimum area is 5,445
6. The property had a nonconforming dwelling and a detached accessory building on the property.
7. The nonconforming dwelling was placed on the property in 2013.
8. Nonconforming structures are regulated by BCZO Section 26.25 which is as follows:

Section 26.25 Nonconforming Structures.

Where a lawful structure exists on the effective date of this Zoning Ordinance, or on the effective date of any future amendments which may be made to this Zoning Ordinance, which structure could not be built under this Zoning Ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following:

A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Should such structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased.

B. If such structure is moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

C. If any such nonconforming structure ceases being used for any reason for a period of more than one (1) year, any subsequent use of such structure shall conform to the regulations specified in this Zoning Ordinance for the district in which such structure is located.

D. Should such structure be destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this article.

E. A residential nonconforming structure may be allowed to expand provided the expansion does not increase the size of the established footprint, or the expansion is within a yard which retains compliance with the required setback and height (e.g. a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming). Provided further that the following criteria are met for the subject structure:

1. *The cost of such work shall not exceed fifty percent (50%) of the market value of such residential structure prior to the time such work is started.*
2. *The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage.*
3. *Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.*

9. The property is currently nonconforming due to the fact that the roof pitch on the existing dwelling is less than 5/12
10. The minimum roof pitch for a dwelling in the TRD is 5/12 as per BCZO Section 4.40(A)(6) which is as follows:

    The minimum pitch of the roof of any building shall be five to twelve (5:12) and the maximum pitch of the roof of any building shall be twelve to twelve (12:12), except that additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed twenty-four to twelve (24:12) and the roof pitch of a covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second story deck.

11. Several existing dwellings located near 515 Lewis Street have roofs with less 5/12 pitch.

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.

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:

ZBA 2018-05-01

Roll Call:
Aye:
Nay:
Abstain:
Absent:

Date: May 1, 2018

_____

Zoning Board of Appeals Chairperson – Pat Kubesh

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.

2018 Zoning Board of Appeals Meeting Schedule

January

S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February

S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March

S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April

S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May

S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June

S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July

S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August

S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September

S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October

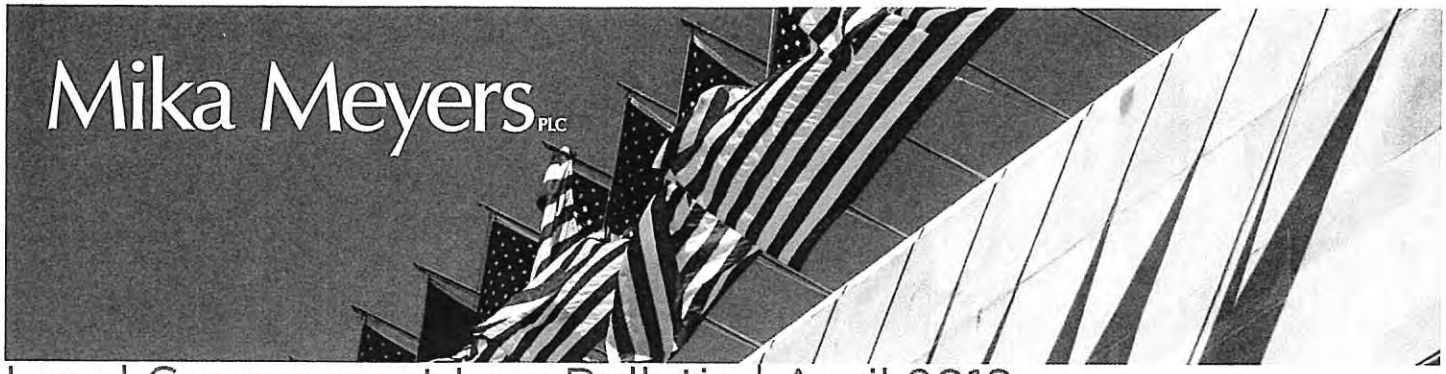
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November

S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December

S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					



Local Government Law Bulletin | April 2018

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. Matthysse
Ronald M. Redick
David S. Lefere
Kimberly M. Large
Nikole L. Canute
Daniel J. Broxup
Joshua D. Beard
Bradley A. Fowler
Michael J. Huff
Benjamin C. Dilley

Of Counsel
James R. Brown
John M. DeVries
Michael C. Haines
David R. Fernstrum
James K. White
Timothy J. Tornga
Fredric N. Goldberg
John H. Gretzinger
Philip M. Idema
Stephen J. Mulder
Scott S. Brinkmeyer
Daniel J. Kozera, Jr.

Paralegals
Crystal M. Steinebach
Jamie N. Fortney
Sheba L. Wilburn

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.

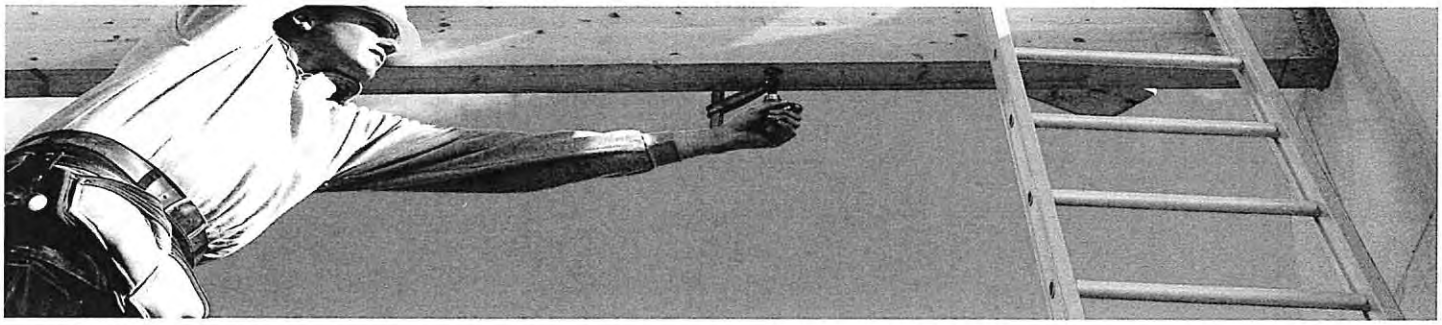
Our firm will host its annual hospitality reception at the Grand Traverse Resort in Suite 1456 on Wednesday, April 25 from 4:00 to 8:00 p.m. If you will be attending the Conference, we invite you to visit us at our hospitality reception for snacks and refreshments. We look forward to seeing you.

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



Practical Advice for Variances, continued from page 1

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.

Practical Advice for Variances, continued from page 2

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 <u>why</u> 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

Practical Advice for Variances, continued from page 3

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.

Mika Meyers PLC
Attorneys at Law

900 Monroe Ave NW Grand Rapids, MI 49503
Tel (616) 632-8000 Fax (616) 632-8002
Web mikameyers.com

©2018 Mika Meyers PLC

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.

Richard M. Wilson, Jr.
Scott E. Dwyer
William A. Horn
Mark A. Van Allsburg
George V. Saylor, III
James F. Scales
Ross A. Leisman
Andrea D. Crumback
Mark E. Nettleton
Ronald M. Redick
Joshua D. Beard
Bradley A. Fowler
Michael J. Huff
James R. Brown
David R. Fernstrum
Timothy J. Tornga
James K. White
John H. Gretzinger