

**BAY TOWNSHIP ZONING BOARD OF APPEALS**  
**March 6, 2019 MEETING MINUTES**

**APPROVED**

- CALL TO ORDER** Chairman Rob Maxwell called the meeting to order at 6:00PM and led with the Pledge of Allegiance.
- ATTENDANCE** Upon the completion of a roll call the following Members of the Bay Township Zoning Board of Appeals (the Board) were identified as being present: Chairman R. Maxwell, Vice Chairperson N. Blandford, Secretary X. Gaudard and members S. Ritter and A. Koteskey.
- Also in attendance:  
Property Owners: Thomas Pustell (property owner)  
Amy Pustell (daughter)
- AGENDA** *MOTION by Gaudard, seconded by Koteskey, to approve the agenda as presented, passed upon unanimous affirmative vote of the Board Members.*
- PRIOR MEETING MINUTES** *MOTION by Ritter, seconded by Koteskey, to approve the January 14, 2019 Zoning Board of Appeals regular meeting minutes as amended, passed upon unanimous affirmative vote of the Board Members.*
- PUBLIC COMMENT** No public comment received.
- PLANNING COMMISSION REPORT** Gaudard summarized the recent Planning Commission activities.

**KATHLEEN AND J. THOMAS PUSTELL VARIANCE REQUEST**

Zoning Variance Appellants: Kathleen and J. Thomas Pustell  
Property Identification No.: 15-001-550-040-00  
Property Address: 01473 Forest Ave., Boyne City, MI 49712

The Pustell's (Appellants) are seeking a variance from the Bay Township Zoning Ordinance, as amended (the Ordinance). The Appellants are proposing to replace the existing deteriorating foundation with a new foundation that is 5-FT 6-Inches higher than the existing foundation elevation, thereby adding spatial area to the existing non-conforming residential structure. Spatial area is defined in the Ordinance within the "Spatial Building Envelop" definition. The new proposed structure height will be below the 30-FT maximum allowed.

The Appellants are seeking a variance from Article XVII, Nonconforming Uses, Section 17.2.d.2 of the Ordinance. Section 17.2.d.2 states that a nonconforming structure, which predates the Bay Township Zoning Ordinance (1974),.....shall require ZBA approval for any expansion or alteration.

The Appellants (Thomas and Amy Prustell) presented the following:

- The original structure was built in 1941.
- The Prustell's bought the property 27 years ago.
- Parts of the existing foundation are setting.
- The existing foundation needs to be stabilized and they also want to raise the house elevation to create a full height basement.
- Raising the house elevation would create a safer entrance to the house by lessening the rear slope walkway to the house.
- Due to the sloping topography to Walloon Lake, raising the house 5-FT would not adversely impact view corridors to Walloon Lake.

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Van Zee reviewed the application as follows (refer to the Appellant's Zoning Variance Application for further details):

- Property Owner: Kathleen and J. Thomas Pustell
- Property Address: 01473 Forest Ave., Boyne City, MI 49712
- Property Tax Identification No.: 15-001-550-040-00
- Zoning District: R-1 Residential within the Waterfront Overlay district

Van Zee further explained the following:

- The Appellants zoning permit application was denied because they did not comply with the Bay Township Zoning Ordinance Section 17.2.d.2, regarding expanding a nonconforming structure that predated the 1974 zoning ordinance. Therefore the Appellants have filed an application to the Zoning Board of Appeals to seek a 5-FT 6-Inch variance from the Ordinance Section 17.2.d.2.
- The Appellants desire to repair a failing portion of their foundation and at the same time to increase the elevation of their house 5-FT 6-Inches in order to have a full height basement.
- As required by the Ordinance, notices were mailed out regarding the proposed variance request and one letter supporting the variance was received from Haggard Plumbing & Heating.

Deliberations by the Board with participation from time to time by Van Zee in response to questions from the Board Members are as follows:

- The Board discussion focused on the issue of determining whether the Appellants nonconforming structure is legally existing and if the proposed expansion will increase the nonconformity.
- Some Board members felt there was no increase in the nonconformity because the Appellant is not encroaching into the front, back and side yard setback requirements, while other Board members felt the increased building height increases the spatial envelop thereby increasing the nonconformity.
- The lot's topography is such that it sits 4-FT to 9-FT below the properties on each side.

The Board reviewed the following Bay Township Zoning Ordinance Article 14.9 findings of facts regarding the application as follows:

- a. The parcel has unique topography features as it is 4-FT to 9-FT lower than the two adjacent properties, and the lot width is only 65-FT wide.
- b. The need for the variance was not created by the property owner's actions does not apply to this situation.
- c. Strict compliance with the spatial envelop requirements would be unnecessarily burdensome as the proposed construction poses no dimensional intrusions into the front, rear and side yard setback requirements.
- d. Granting the variance would not do substantial justice to the Appellant and would not harm property owners in the vicinity.
- e. The Board Members felt that granting the variance will not cause adverse impact on surrounding property as the additional building height is still within the Ordinances 30-FT building height requirement.
- f. The Board felt that granting of the variance would not adversely affect the purpose of the Ordinance.

**MOTION by S. Ritter, seconded by X. Gaudard:**

**The Bay Township Zoning Board of Appeals findings of fact identified in the variance request for property identified as 15-001-550-040-00 is as follows:**

- **Property Owner: Kathleen and J. Thomas Pustell**
- **Property Address: 01473 Forest Ave., Boyne City, MI 49712**
- **Property Tax Identification No.: 15-001-550-040-00**
- **Zoning District in which the Property resides: R-1 Waterfront Overlay District**
- **The property is subject to the provisions of the Ordinance, Article V (Zoning District Regulations) and Article XVII, Nonconforming Uses, Section 17.2.d.2**

**Based upon the findings of fact as identified by the Bay Township Zoning Board of Appeals in hearing the request for the variance in regard to Property Tax Identification No. 15-001-550-040-00, and after consideration of all information presented by the Appellant, the standards set forth in Article XVII and the facts found above, the Zoning Board of Appeals find that the**

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proposed construction of replacing the deteriorated existing foundation under the building located on the referenced property with a new foundation 5-FT 6-Inches higher than the existing building foundation, as proposed by the appellant, does not increase the existing nonconformity in any matter that violates the applicable Ordinance provisions, and the requested variance is thereby granted.

Board Members voting in support of the motion by roll call vote: Gaudard, Ritter, Blandford, Koteskey and Maxwell, and none voting in opposition. Motion passed.

**PUBLIC COMMENT**

No public comment received.

**ADJOURNMENT**

**MOTION by Blandford, seconded by Ritter, to adjourn the meeting at 7:28PM, passed upon unanimous affirmative vote of the Board Members.**

Respectfully submitted,

James G. Vanek  
Planning Commission Recording Secretary