I. Call to Order

The meeting was called to order by Ketchum at 7:00 p.m.

II. Adopt Agenda

DelaRosa-Pearn moved to adopt the agenda as presented. Terpstra seconded the motion, which passed unanimously.

III. Public Comment

David Hoffius asked the Board to reconsider the decision it made concerning the Shanker application for 15756 Willows Drive at its October 28, 2021 meeting. He indicated that because the Shanker application was revised following the public hearing at that meeting, the Board should reconsider its decision and allow him to submit additional material. Hill noted that negotiations concerning setbacks on waterfront lots are common following public hearings. Bultje noted that Hoffius stated at the October 28, 2021 Board meeting that he was not satisfied with the revised proposal, and he was allowed to comment after the public hearing was closed. The Board did not make or adopt a motion to reconsider the Shanker decision.

IV. O’Leary – Waterfront Setback Determination – 14446 Bayou Drive

Dan and Patricia O’Leary presented an application for a single story dwelling with 2700 square feet on a lot that is currently vacant. A portion of the dwelling will be constructed in a floodplain so fill will be required.

Mierle stated that he had no objection to the sight lines from the proposed dwelling.

Terpstra noted there is only one neighbor close by, and there would not be any significant sight line interference because the proposed dwelling is single story.

DelaRosa-Pearn stated she is somewhat concerned for the dwelling on the south side, facing the water. She said that dwelling would lose some view of the inlet.

Ketchum stated he is more concerned with the view for the dwelling to the north, because both that dwelling and the proposed dwelling are oriented the same way.
Mrs. O’Leary stated that she and her husband would be willing to move their proposed dwelling back five feet.

Mierle noted the dwelling to the north would only have the view from bedrooms affected, and therefore the impact would not be that great.

Mr. O’Leary reiterated that he and his wife are willing to move their dwelling back, which would get the dwelling farther out of the floodplain. However, he noted that a potential problem would be the location of the septic tank.

Ketchum opened the public hearing. There were no public comments, and there was no correspondence. Postmus moved to close the public hearing. DelaRosa-Pearn seconded the motion, which passed unanimously.

The Board reviewed all of the standards of Section 356.6 of the Zoning Ordinance, and found that the dwelling as proposed satisfied those standards.

Mrs. O’Leary confirmed that she and her husband would remove the wooden structure at the water’s edge as part of the process of building the proposed dwelling.

Mierle noted that moving the dwelling back from the water would make the garage closer to the road than the other garages in the area.

On the basis of the factors in Section 356.6 of the Zoning Ordinance, and on the basis of the discussion held by the Board and the presentation of the applicants, DelaRosa-Pearn moved to approve the application as presented. The approval of the application would be contingent on the following:

a. The applicants will comply with all federal, state, and local laws and ordinances, including compliance with applicable critical dune laws.

b. The applicants will comply with all verbal representations as recorded in the minutes.

c. The applicants will comply with the application as presented, and with the requirement that the wooden structure at the water’s edge be removed as part of the process of constructing the dwelling in question.

Terpstra seconded the motion, which passed unanimously with a roll call vote.

V. Cain – Variance to Expand Existing Non-Conforming Structure – 15486 Howard Street

Norman Dodds presented the application on behalf of Brian and Erica Cain.

Dodds acknowledged the dwelling does not meet the minimum side yard requirement for either side. He indicated the Cains wish to expand the dwelling by adding a second story, going straight up from the existing walls which are too close to the side lot lines. The additional story will not be any closer to the side lot lines than the first story already is, but it likewise will not meet the required side yard setbacks.
Dodds stated that as a condition of constructing the expansion of the dwelling, the old garage on the parcel will be eliminated.

Mr. Cain stated that he talked with the neighbor to the east, who expressed approval of the project. He said the neighbor on the other side did not voice any objection.

Ketchum noted that this is a spacious neighborhood with wide side yards. He said that this application proposes an expansion of a dwelling which is already too close to the side lot lines and does not fit in with the neighborhood.

Ketchum asked about the adequacy of the footings for the dwelling. Dodds stated that the foundation is adequate to handle the two story expansion.

Ketchum asked why the Cains don’t simply start over and build a conforming dwelling on the lot. Mrs. Cain stated that they have not pursued that option because they have invested $100,000 in the current dwelling already.

Postmus asked if the lot coverage limitations of the Zoning Ordinance would still be satisfied if this expansion is granted. Hill stated that he has not yet computed that and would do so prior to issuing any building permit.

Ketchum opened the public hearing. There were no comments from the public, and there was no correspondence. Mierle moved to close the public hearing. Terpstra seconded the motion, which passed unanimously.

Mierle noted that the applicants are not increasing the non-conformity of their dwelling, in that they are not moving it closer to the side lot lines. He said there is no line of sight interference. He also noted that one of the side yards is actually adjacent to the rear yard of the neighboring parcel.

Postmus noted that other dwellings in the area are likewise as high as the applicants are proposing for their dwelling.

The Board reviewed the standards in Section 112.1 of the Zoning Ordinance for a dimension variance.

By consensus, the Board found that there are no exceptional or extraordinary circumstances or conditions applying to the property in question, or as to its intended use, that do not apply generally to other properties or classes of uses in the same zone. Terpstra pointed out that if that is the finding of the Board, then the variance cannot be granted because all of the standards must be affirmatively met by the applicants in order to obtain a variance.

The Board discussed but did not immediately reach a consensus about whether the side yard variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone.

By consensus, the Board found that the variance would not be a substantial detriment to adjacent property and would not materially impair the intent or purpose of the Zoning Ordinance.
By consensus, the Board found that the situation faced by these applicants and the intended use of the property is not so general or recurrent as to make a zoning ordinance provision reasonably practicable.

By consensus, the Board found that any exceptional or extraordinary circumstances applying to the property are self-created.

By consensus, the Board found that the literal requirements of the Zoning Ordinance would not involve practical difficulties for the applicants.

On the basis of the above discussion, Terpstra noted that the variance could not be granted because all of the factors must be met if the variance is to be granted.

Dodds noted that a second story could “100 percent” be added to the dwelling in compliance with the Zoning Ordinance and its setbacks.

Terpstra made a motion to deny the side yard variance as requested, on the basis that there are not exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zone, and on the basis that the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zone. DelaRosa-Pearn seconded the motion. By roll call vote, the motion passed with Postmus dissenting.

VI. Garrison – Side and Rear Yard Variance Requests – 18069 North Shore States Road

Norman Dodds presented the application on behalf of John Garrison.

He noted that the lot in question is bounded on one side by Lake Michigan and the other side by the road, and there is not much room with which to work.

He further noted that the Michigan Department of Environment, Great Lakes, and Energy is willing to approve the planned expansion of the dwelling as long as the setbacks stay where they are.

He said that the additional story built on top of the existing dwelling would result in the elimination of existing overhangs, so that although the second story would still be too close to certain lot lines, the dwelling would have greater compliance with the Zoning Ordinance than it currently has.

Dodds noted that North Shore Estates Association has approved this expansion of the dwelling.

He said that the applicant received no response from neighbors after the notice for this variance request was sent by the Township.

Ketchum opened the public hearing for the application. There were no public comments. An email was received from Jim Brady, 18075 North Shore Estates Road, objecting to the variance. Terpstra moved to close the public hearing. Mierle seconded the motion, which passed unanimously.

The Board reviewed the variance standards in Section 112.1 of the Zoning Ordinance.
By consensus, the Board found that the existence of the road and Lake Michigan create extraordinary or exceptional circumstances or conditions for this property that do not apply to property in general in the same zoning district. The Board further found that the limitations established by EGLE and the increased conformity that would result from the elimination of overhangs were unusual circumstances.

By consensus, the Board found that the variance necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district, because EGLE requires the maintenance of the same footprint along North Shore and the critical dune.

By consensus, the Board found that the variance would not be a substantial detriment to adjacent property and would not materially impair the intent and purpose of the Zoning Ordinance or the public interest.

By consensus, the Board found that the condition of the property or its intended use is not of so general or recurrent a nature to make a general regulation in the Zoning Ordinance a reasonable practicality.

By consensus, the Board found that the practical difficulties encountered by this property are not self-created.

By consensus, the Board found that the enforcement of the literal requirements of the Zoning Ordinance would create practical difficulties for the applicant.

On the basis of the above discussion and the consensus findings of the Board regarding the standards in Section 112.1 of the Zoning Ordinance, DelaRosa-Pearn moved to grant the variance application based on the conditions that the applicant comply with the documents submitted to the Zoning Board of Appeals; comply with the federal, state, and local laws and ordinances, including critical dune requirements; and comply with all the oral representations made by the applicant’s representative and recorded in these minutes.

Terpstra seconded the motion, which passed unanimously with a roll call vote.

VII. Adjournment

Mierle moved to adjourn the meeting at 9:00 p.m. DelaRosa-Pearn seconded the motion, which passed unanimously.

Respectfully submitted,

George Postmus, Secretary
Zoning Board of Appeals