



**SPECIAL MEETING
ZONING BOARD OF APPEALS
Thursday, July 20, 2023, at 5:00 p.m.
City of New Buffalo
224 W. Buffalo Street
New Buffalo MI 49117
AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Approval of Previous Minutes – May 24, 2023
6. Public Comment
7. Public Hearing
 - a. 142 S. Whittaker (11-62-0340-0390-00-8) - Requests a variance for the reduction in the side yard setback requirement.
8. New Business
 - a. 142 S. Whittaker (11-62-0340-0390-00-8) - Requests a variance for the reduction in the side yard setback requirement.
9. Adjournment

May 24, 2023

ZONING BOARD OF APPEALS REGULAR MEETING

5:00 pm

Chair Smith called the meeting to order at 5:00 p.m.

Pledge of Allegiance – ZBA Board members led the Pledge of Allegiance.

Roll Call: Members Cooper, Gabryszewski, Pokuta, Joseph, Smith

City Staff Present: City Manager, Darwin Watson; City Clerk, Amy Fidler

Approval of Agenda: Motion by Member Gabryszewski, seconded by Member Joseph to approve the agenda:

Roll Call Vote:

AYES: Gabryszewski, Pokuta, Joseph, Cooper, Smith

NAYES:

ABSENT:

ABSTAINED:

Motion Carried, 5-0.

Approval of Previous Minutes – May 18, 2023: Motion by Member Gabryszewski, seconded by Member Joseph to approve the previous minutes from May 18, 2023:

Roll Call Vote:

AYES: Pokuta, Joseph, Cooper, Gabryszewski, Smith

NAYES:

ABSENT:

ABSTAINED:

Motion Carried, 5-0.

Public Comment:

Steve Spielman

Ray Kirkus (Clerk Fidler read a letter from Ray Kirkus into public record).

New Business

Motion by Member Joseph, seconded by Member Gabryszewski to untable the variance request for 446 E. Buffalo Street:

Roll Call:

Ayes: Joseph, Cooper, Gabryszewski, Pokuta, Smith

Nays:

Absent:

Abstained:

Motion Carried: 5-0.

May 24, 2023

ZONING BOARD OF APPEALS REGULAR MEETING

5:00 pm

446 E. Buffalo (11-62-1150-0013-00-0) - Requests variance for the following: required minimum lot width from 100 feet to 60 feet; side setback from 40 feet to 10 feet.

Motion by Member Pokuta, seconded by Member Cooper to deny the variance for 446 E. Buffalo Street as presented as the variance does not meet the conditions cited in Section 21-8 (B) of the Zoning Ordinance:

Roll Call:

Ayes: Cooper, Gabryszewski, Pokuta, Joseph, Smith

Nays:

Absent:

Abstained:

Motion Carried: 5-0.

Motion by Member Pokuta, seconded by Member Gabryszewski to adjourn the meeting at 5:22 p.m.

Roll Call:

Ayes: Gabryszewski, Pokuta, Joseph, Cooper, Smith

Nays:

Absent:

Abstained:

Motion Carried: 5-0.

amf

Tom Smith, Chair

Amy Fidler, City Clerk



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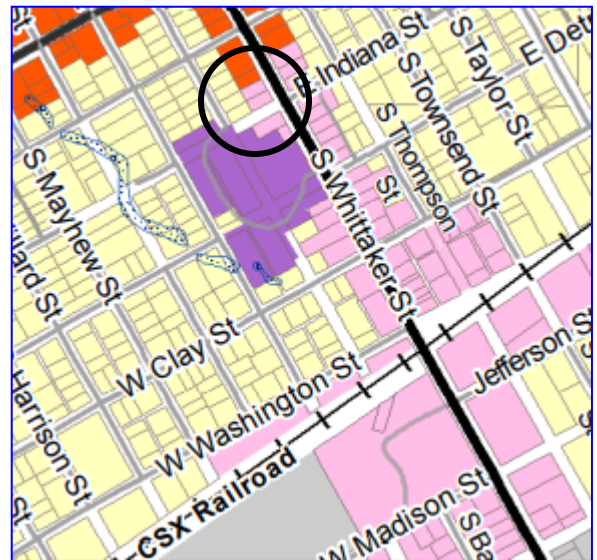
Applicant: Thomas G. Prenta


Request: Variance Approval – to allow for the construction of an 18 ft x 20 ft attached deck that fails to meet the side setback requirement

Property: 142 South Whittaker Street

Zoning: “GCD” District

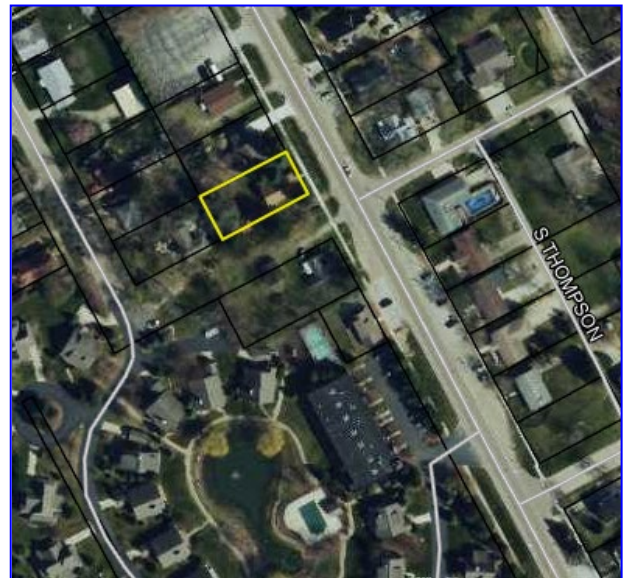
Zoning Map



 GCD General Commercial District

Application Overview

- The subject property is 8712 sq ft in area and is provided 66 ft of frontage on S. Whittaker Street. (The abutting segment of Indiana Street is vacated and does not serve to provide frontage to the subject property.) The subject site is a lawful nonconforming interior lot.
- The surrounding area is zoned GCD and R-1 District and is occupied by residential land use.
- The subject property is currently occupied by a 2-story single-family dwelling and detached garage.
- Applicant proposes the construction of an 18 ft x 20 ft wood deck/steps on the rear (west) side of the house.





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- Applicable Development Standards per Section 11-3 – GCD District and Existing/Proposed Conditions:

Section 6-4 D. GCD District Development Standards

	Required/Allowed	Existing/Proposed
Lot Area	15,000 sq ft	8712 sq ft
Lot Width	100 ft	66 ft
Dwelling Unit Sq Ft	N/A	1042 sq ft
Building Height	35 ft	N/A
Front Setback	30 ft	57 ft (in rear yard)
Side Setback		
North (residential use)	40 ft (min)	29 ft
South (vacated road)	10 ft (min)	19 ft
Rear Setback	30 ft (min)	55 ft
Lot Coverage	60% (max)	Approx 25%

- **Applicant requests Variance Approval from the 40 ft side setback requirement to allow for a 29 ft setback for the proposed 360 sq ft rear yard deck.**

Variance Review Criteria

Pursuant to Section 21-8, Zoning Ordinance, the ZBA shall find that the following standards are met before granting a variance:

1. ***That there are exceptional or extraordinary (unique) physical circumstances of the property that do not apply generally to other properties in the area/zoning district.***
 - The Sketch Plan does not reveal the presence of any unique physical limitations on the site preventing compliance. (e.g., slope, narrowness/shalowness, etc.)
 - The subject site is a nonconforming lot, substandard in the required width by 34 ft . . however, it is similar in size to the lots in the surrounding area and so therefore is not unique in its circumstances.
2. ***That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make***



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reasonably practical the formulation of a general regulation for such conditions or situations.

- There is no 'condition/situation of the property' that suggests an amendment of the zoning ordinance is more appropriate than a request for variance relief.
- A request for relief from the setback standard through the variance process is acceptable.

3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity.

- The subject site is currently occupied by a dwelling; a denial of the setback variance for the proposed deck will not prevent permitted use of the property.
- The narrowness of the subject site and the nonconforming location of the existing house limit the ability of the applicant to establish an attached deck in compliance with both side setback requirements. Is the presence of a deck a 'right enjoyed by other properties in the area'?
- The setback approach employed by Section 11-3 D. is designed to consider and protect the residential use of adjacent properties, arguably to provide 'substantial justice' to area property owners. This suggests the proposed 29 ft setback may not provide 'substantial justice' to the adjacent property owner.
- A review of side setbacks on adjacent properties and in the surrounding area is also relevant in determining how the requested setback reduction (29 ft instead of 40 ft) will *be consistent with the rights enjoyed by other properties* in the area.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.



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- The new deck is proposed to be located 7 ft further from the side (north) property line than the existing house, representing a decrease in the degree of the existing nonconforming side setback.
- However, the proposed deck will also result in an increase in the area of structures on the site that encroach into the required side setback, representing an increase in the existing setback nonconformity.

5. *The variance will not impair the intent and purpose of the Ordinance.*

- The 40 ft setback standard for the north property line is applied due to the residential use of the property adjacent the north. It is designed as an 'automatic adjustment' of the setback standard based on the use of an adjacent property so as to effectively provide necessary separation/buffering.
- The setback of the house adjacent to the north and the presence of an existing buffer (fence, landscaping) along the north property should be considered in determining if separation/buffering objectives can still be met with the proposed 29 ft setback.

6. *The practical difficulty causing the need for the variance request is not created by an affirmative action of the applicant/property owner.*

- The deck proposal is at the discretion of the property owner . . . resulting in practical difficulties created by an affirmative action of the applicant property owner.